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Supreme Court, U.S.
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In The

Supreme Court of the United States

Lawrence Stephen Maxwell, Sr.
Petitioner

v.

United States of America

On Petition for Writ of Certiorari
To The United States Court of Appeals
for the Eleventh Circuit

PETITION FOR WRIT OF CERTIORARI

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86 pp

QUESTIONS PRESENTED FOR REVIEW

1. Did the Eleventh Circuit err in holding, in conflict with the decisions of this Court, in conflict with its own prior decisions and in conflict with the decisions of the D. C. circuit, and the First, Second, Sixth and Eighth circuits by failing to find that failure to allow a defendant the opportunity to withdraw his plea upon rejection of the plea agreement is *plain error* in violation of Federal Rules of Criminal Procedure, Rule 11 (e) (4)?

2. Did the Eleventh Circuit err in holding, in conflict with the decisions of this Court, and in conflict with its own prior decisions, in failing to find reversible error for the government's acknowledged breaches of the plea agreement?

3. Did the Eleventh Circuit err in holding, in conflict with the decisions of the First, Second, Fifth, Sixth, and Ninth circuits by failing to find *plain error* for judicial participation in plea discussions in violation of Federal Rules of Criminal Procedure, rule 11 (e) (1)?

4. Did the Eleventh Circuit err in holding, in conflict with the decisions of the First, Second, Third, Fourth, Fifth, Sixth, Seventh, Eighth, Ninth and Tenth circuits by failing to find that the district court was in want of territorial and subject matter jurisdiction?

PARTIES

The names of the parties to the proceeding in the court below appear in the caption of the case. *

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* The government is a party to the case. Lawrence S. Maxwell is an individual. There are no corporations involved in the case.

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No. ______

In The

SUPREME COURT OF THE UNITED STATES

Lawrence Stephen Maxwell, Sr.

Petitioner,

v.

United States of America,

Respondent.

PETITION FOR WRIT OF CERTIORARI

DECISION BELOW

The decision of the court of appeals is unpublished. The opinion that was issued on letter-sized paper has been reformatted to comply with Rule 33.1 and is included verbatim and in its entirety in the Appendix.

JURISDICTION

The United States Court of Appeals for the 11th Circuit entered its judgment in this case on March 30, 2001. This Court has jurisdiction under 28 U.S.C. § 1254(1).

CONSTITUTIONAL PROVISIONS, STATUTES AND REGULATIONS

Federal Rule of Criminal Procedure Rule 11 (e) (4) provides as follows:

> If the court rejects the plea agreement, the court shall . . . advise the defendant personally . . . that the court is not bound by the plea agreement, afford the defendant the opportunity to then withdraw the plea, and advise the defendant that if the defendant persists in a guilty plea . . . the disposition of the case may be less favorable to the defendant than that contemplated by the plea agreement.

Federal Rule of Criminal Procedure Rule 11 (e) (1) provides as follows:

> The district court shall not participate in any such [plea] discussion.

The sixth amendment to the United States Constitution provides as follows:

> In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State or district wherein the crime shall have been committed . . .

Article 1 Section 8 Clause 17 that provides as follows:

> The Congress shall have Power...To exercise exclusive Legislation in all Cases whatsoever, over such District (not exceeding ten Miles square) as may, by Cession of Particular States, and the Acceptance of Congress, become the Seat of the Government of the United States, and to exercise like Authority over all Places purchased by the Consent of the Legislature of the State in which the Same shall be, for the Erection of Forts, Magazines, Arsenals, dock-Yards and other needful Buildings;

Title 44 Section 255 that provides as follows:

> Notwithstanding any other provision of law, the obtaining of exclusive jurisdiction in the United States over lands or interests . . . Unless and until the United States has accepted jurisdiction over lands hereafter to be acquired as aforesaid, it shall be conclusively presumed that no such jurisdiction has been accepted.

STATEMENT OF THE CASE

Appellant Lawrence Stephen Maxwell was convicted of one count for violation of 18 U.S.C. § 371, conspiracy to defraud the United States by endeavoring to impede the internal revenue laws, and one count for violation of 18 U.S.C. § 287, filing a false claim with the government (Rule 20 transfer from the Southern District of Texas).

Maxwell was indicted on July 31, 1997 on the 18 U.S.C. § 371 charge. Maxwell, a minister with a family counseling organization founded by Maxwell in 1991, was assisting the co-defendant, Thomas Harold Lake, who had called the family ministry because he believed he was being subjected to abusive IRS acts for seizure of his bank account and wages for alleged taxes he did not believe he owed. Maxwell, after considerable attempts to talk with the IRS and to obtain documents that would support the levies issued against Lake, became completely frustrated with trying to find any judicial forum to enjoin the IRS's unlawful collection acts. Maxwell, after considerable discussions with several attorneys, assisted Lake in preparing and filing a criminal complaint against the IRS agents as required by 18 U.S.C. § 4, and subsequently filed a lien petition in an Alabama courthouse pursuant to Alabama law against the IRS agents. The lien petition was based solely on statutory restitution owed to Lake for the criminal acts that Maxwell and Lake believed had been committed by the agents. It is Maxwell's contention that the lien petition was a First Amendment petition filed under state law with the Probate Judge of Tuscaloosa County, Alabama to redress the grievances caused by the IRS.

Maxwell contends that the government knew from the outset that his conduct was not criminal. Knowing the conduct was civil in nature, in October 1995, the government filed a civil action in the United States District Court for the Northern District of Alabama to obtain a civil injunction to enjoin the civil acts of the Defendants. Maxwell was denied a jury trial and a summary judgment was entered in May of 1996 making the issues in the civil action *res judicata* from that time forward.

Maxwell was threatened by the Assistant United States Attorney with additional prosecutions if he did not sign the plea agreement. Because he waited three months to sign the agreement the government indicted him for an alleged violation of 18 U.S.C. § 287, claiming that Maxwell caused a "Certified Banker's Check" to be presented to the IRS to pay off an IRS levy. The levy was invalid, Maxwell did *not* have a tax liability, and the fraudulent lien was subsequently released by the IRS after Maxwell sued in State court. Maxwell's thorough due diligence led him to believe that the "certified" check was perfectly valid. However, failure of the IRS to be able to redeem the "certified" check (though hundreds just like it had been accepted and redeemed by the IRS prior to the check being sent on behalf of Maxwell) resulted in the IRS determining that the "certified" check was fraudulent. Maxwell did not tender the check nor did he have any knowledge that the tendered check was invalid. He was coerced into a guilty plea by numerous promises and threats by the district court and the Assistant United States Attorney. The 18 USC 287 charge was combined with the 18 USC 371 charge in the same plea agreement in which the government was unopposed to probation on both charges with the sentences to run concurrent.

Maxwell, under extreme coercion from the statements of the district court, entered into the plea agreement with the government. Maxwell entered a *conditional* plea of guilty on April 14, 1998 and was sentenced on July 24, 1998.

Maxwell's plea agreement was entered into after *extensive* plea discussions initiated and directed by the district court judge. The plea agreement, in keeping with the district court's offer of a "greatly reduced sentence" and a "probationary sentence as opposed to going to jail," stated that the government would recommend sentencing at the low end of the guideline, would recommend a downward departure of two levels for acceptance, and stated that the government was unopposed to probation. In fact extensive discussions between Maxwell, his attorney and the A.U.S.A. resulted in a determination that the appropriate sentencing guideline was a level 8 with a sentence of zero months to six months, with sentencing recommended at the low end of the guideline (zero months, straight probation).

The Record clearly shows that Maxwell succumbed to the district court's offers, promises, and coercion, and entered into the plea agreement. The district court then, at sentencing, *rejected the plea agreement* that she had solicited, and sentenced Maxwell to eighteen months in prison, two months longer in prison than she had previously told him in open court (as part of the coercion to obtain the plea) that he could get if he had gone to trial and been convicted. Maxwell was also given three years supervised release. The 54 months of supervision amount to nine hundred percent more time under government supervision than was *offered* by the district court in exchange for a guilty plea.

The government, in collusion with the district court, breached the plea agreement in every possible way. The 11th Circuit decision is in direct conflict with this Court, its own decisions and the decisions of virtually every other circuit court in finding that the government was *allowed* to breach the agreement simply because the government allegedly decided that Maxwell had not accepted responsibility and exhibited to the government that he did not think he was guilty. Notwithstanding that the plea agreement was rejected by the district court effectively nullifying the agreement and the plea, the plea agreement contained no such "out clause" for the government.

The Record shows that the prosecution was politically motivated and that the district court held extreme prejudice and bias against Maxwell. Though Maxwell had no prior criminal history and was even allowed to possess a firearm on bond for hunting purposes by order of the Court (showing that no one alleged or thought Maxwell was dangerous in any way), the district court repetitively stated at sentencing that Maxwell was "very dangerous" and explained that her claim was due to Maxwell's territorial jurisdictional arguments he had made in his motion to quash the indictment. The district court stated that Maxwell was "standing before [her] because of his illegal beliefs" and that his "thoughts and ideas were against the laws of this country." As further evidence of the political prosecution, absent any motion by the government or showing that Maxwell was a flight risk or a danger to anyone, he was taken into custody at sentencing, shackled and leg-ironed in the courtroom and was taken by federal marshals to a maximum security facility where he was placed in solitary confinement.

Though the issue of rejection of the plea agreement was a solid issue squarely before the court of appeals and was the primary focus of the oral argument to the court of appeals, the court of appeals simply chose not to address the issue that the district court rejected the plea agreement. The court of appeals also chose not to address the issue that Maxwell had a right to a fair and impartial court. Instead, the court of appeals literally and completely fabricated a new set of facts that are in complete contradiction to the record so as to *create* a basis for its claim that the district court did not participate in *plea discussions.* The court of appeals conjectured that the plea coercion hearing was a Rule 44 hearing and that the trial judge's statements were nothing more than her attempt to determine whether Maxwell was qualified to proceed *pro se.* However, the statements of the district court literally and specifically, on the record, sought to get Maxwell to agree to a *"plea agreement"* that she told Maxwell would *"be far more beneficial than if [he] went to trial."* One week prior to coercing Maxwell into a plea agreement the district court literally, on the record, told Maxwell's co-defendant that *"the government might be willing to come to you and offer you a better sentence or a deal in exchange for your cooperation in their case against Maxwell."* The district judge even offered to order the Assistant United States Attorney to stay as late as necessary and to keep the courthouse open so that Maxwell's codefendant and the government could work out their *"deal."* The court of appeals chose not to address these and other coercive statements by the trial judge where she actually attempted to bribe Maxwell's co-defendant into testifying for the government against Maxwell.

REASONS FOR GRANTING THE WRIT

The case presents the question whether a trial judge can simply ignore the rules of procedure, exhibit extreme prejudice, force defendants to engage in plea discussions, offer deals, obtain plea agreements based on the promises, inferences and conveyances of the district court, then reject the agreement at sentencing, enhance the sentence for allegations that were not included in the indictment, refuse to allow the opportunity for the plea to be withdrawn and sentence a defendant to a term of imprisonment when he has never been convicted. Additionally, the question before this Court is why the court of appeals chose not to even address the issues of the fact that the district court rejected the plea agreement and refused Maxwell the opportunity to withdraw his plea, and chose not to address Maxwell's sixth amendment right to have a fair and impartial court, thereby ignoring the mountain of record evidence that the trial judge was extremely biased and prejudiced against Maxwell. Though these issues were squarely before the Court of Appeals, its decision is devoid of any mention of these issues.

Boiled to its essence, the question before the Court is whether the rules of criminal procedure still have force and effect in the federal courtrooms or have we arrived at a state of anarchy where a federal trial judge can act in total disregard to the rule of law, can solicit a witness for the prosecution, can offer deals to co-defendants to obtain testimony to enhance the government's case, can coerce defendants into plea discussions, can promise a sentence if the defendant "would just plead guilty," can reject the plea agreement that contained the inducements promised by the district court, and can then imprison the defendant without a trial or conviction.

The decision of the 11th Circuit denying petitioner's claims of plain error violations of Rule 11 (e) (4) and Rule 11 (e) (1), and refusal to even address the rejection of the plea agreement, the government's multiple breaches of the plea agreement, the violation of Maxwell's sixth amendment right to a fair and impartial court, and the want of territorial and subject matter jurisdiction by the district court, conflict with the decisions of this Court, the 11th circuit's own controlling decisions and the decisions of virtually ever other circuit all of which have addressed the relevant issues. The court of appeals decision conflicts with the clear teachings of this Court, and presents important and recurring questions of constitutional law. Therefore, the Court should grant the petition for certiorari.

I. THE DECISION OF THE ELEVENTH CIRCUIT TO FAIL TO FIND PLAIN ERROR FOR VIOLATION OF RULE 11 (e) (4) IS IN CONFLICT WITH THIS COURT AND IN CONFLICT WITH IT OWN DECISIONS AND THE DECISIONS OF THE D.C. CIRCUIT, AND THE FIRST, SECOND, SIXTH AND EIGHTH CIRCUITS.

The court of appeals decision conflicts with *U. S. v. Hyde,* 520 U.S. 670 (May 27, 1997), to wit:

> If the court had decided to reject the plea agreement, it would have turned to subsection (e)(4) of Rule 11. That subsection, a critical one for our purposes, provides:
>
> "If the court rejects the plea agreement, the court shall . . . advise the defendant personally . . . that the court is not bound by the plea agreement, afford the defendant the opportunity to then withdraw the plea, and advise the defendant that if the defendant persists in a guilty plea . . . the

> disposition of the case may be less favorable to the defendant than that contemplated by the plea agreement." Rule 11(e)(4) (emphasis added).
>
> Thus, if the court rejects the agreement, the defendant can "then" withdraw his plea for any reason and does not have to comply with Rule 32(e)'s "fair and just reason" requirement. This provision implements the commonsense notion that a defendant can no longer be bound by an agreement that the court has refused to sanction.

Id. The court of appeals failed to even address Maxwell's showing and the clear record evidence that the district court committed *plain error* in violation of Rule 11(e)(4) by failing to afford Maxwell the opportunity to withdraw his plea after she rejected the plea agreement, to wit:

> THE COURT: I told him [Maxwell] at the time I was not bound to accept the plea agreement . . . I do not intend to accept the plea agreement . . . The Motion to Accept Plea Agreement is denied.

(R9-3). The court of appeals erred by failing to find that the district court had failed to implement the "commonsense notion that a defendant can no longer be bound by an agreement that the court has refused to sanction." *U. S. v. Hyde,* 520 U.S. 670 (May 27, 1997). Maxwell, because he knew of the district court's extreme prejudices (another issue that was ignored by the 11th Circuit court), filed a Motion to Accept Plea agreement that was based, in its entirety on the controlling Supreme Court opinion in *Hyde.* The Motion to Accept Plea Agreement stated in simple terms that if the district judge, at the sentencing hearing, rejected the plea agreement she must, in compliance with Rule 11 (e) (4), "afford the defendant the opportunity to withdraw his plea." The district judge rejected the plea agreement, refused to allow Maxwell an opportunity to withdraw his plea, and denied Maxwell's motion that she comply with Rule 11 (e) (4). From the moment the district judge rejected the plea agreement she proceeded to sentence Maxwell line by line from the Presentence Investigation Report with no regard whatsoever to the plea agreement she had rejected.

Therefore, she sentenced Maxwell without a conviction. The court of appeals is in direct conflict with *Hyde*:

> But if the court rejects the Government's promised performance, then the agreement is terminated and the defendant has the right to back out of his promised performance (the guilty plea), just as a binding contractual duty may be extinguished by the non-occurrence of a condition subsequent. See J. Calamari & J. Perillo, Law of Contracts §11-7, p. 441 (3d ed. 1987); 3A A. Corbin, Corbin on Contracts §628, p. 17 (1960).

The district court rejected the plea agreement. Pursuant to *Hyde* the agreement was terminated. The 11th Circuit court erred in failing to find *plain error* for failing to allow Maxwell to "back out of his promised performance (the guilty plea)." *Id.*

The court of appeals decision is in conflict with its own controlling decisions in *United States v. Yesil*, 991 F.2d 1527, 1531 (11th Cir. 1992), whereby it based its ruling on the finding of the Supreme Court in *Santobello v. New York*, 404 U.S. 257, 262, 92 S.Ct. 495, 498, 30 L.Ed 2d 427 (1971) and conflicts not only with *Santobello* but also with decisions in the D.C. circuit, and 1st, 2nd, 6th and 8th circuits where the 11th circuit had previously held that a district judge must either accept the plea agreement and be bound by the terms of the agreement, or reject the agreement and afford the defendant the opportunity to withdraw his plea. In *United States v. Yesil*, 991 F.2d 1527, 1531 (11th Cir. 1992), the 11th Circuit court held that:

> A trial judge also has the discretion to reject a plea bargain. Fed.R.Crim.P. 11(e)(4); *Santobello v. New York*, 404 U.S. 257, 262, 92 S.Ct. 495, 498, 30 L.Ed 2d 427 (1971). However, **if the court chooses to reject the plea bargain, the defendant has the parallel right to withdraw his guilty plea. Fed.R.Crim.P. Rule 11(e)(4).**
> [A] district court's discretion is "severely" curtailed once that court accepts a plea bargain. *United States v. Punck*, 601 F.2d 968, 970 (8th Cir. 1979), *cert. denied.*, 444 U.S. 1015, ("a plea bargain severely limits the discretion of a sentencing judge."); *United States v.*

> *Burreuzo,* 704 F.2d 33, 38 (2nd Cir. 1983). **In fact, "[o]nce the court unqualifiedly accepts [a plea] agreement it too is bound by the bargain."** *United States v. Holman,* 728 F.2d 809, 813 (6th Cir. 1984), *cert. denied; accord. United States v. Cruz,* 709 F.2d 111, 115 (1st Cir. 1983). We agree with the D.C. Circuit's statement that:
>
> The judge's faithful observance of the requirements of Rule 11 is just as vital to the fairness and efficiency of the process as the prosecutor's compliance. She has a primary duty under the rule to insure not only that the terms of the bargain are understood by the defendant but that they are adhered to by both sides, *as well as by the court itself. United States v. Blackwell,* 694 F.2d 1325, 1339 (D.C. Cir. 1982) (italics emphasis added by the 11th Circuit Court).
>
> **If a plea agreement is accepted by the district court and a defendant subsequently is denied the benefit of the agreement for which he bargained, the defendant is constitutionally entitled to relief.** *See Santobello v. New York,* 404 U.S. 257, 292 (1971). **"[W]hen a plea rests in any significant degree on a promise or agreement of the prosecutor, so that it can be said to be part of the inducement or consideration, such a promise must be fulfilled.";** *See also Mabry v. Johnson,* 467 U.S. 504, 509 (1984). **Relief in these instances may come in the form of specific performance of the plea agreement or in the opportunity to withdraw the guilty plea**. *Santobello v. New York,* 404 U.S. @ 263, 92 S.Ct. @ 499.

Id. *1532-33. (bold emphasis added). The court of appeals decision is in conflict its own prior decision in *U.S. v. Zickert,* 955 F.2d 665, 669 (11th Cir. 1992), in which it held that if "the district court had rejected the plea agreement . . . **then the district court would have been required to give him the opportunity to withdraw his plea under Rule 11(e)(4).**" *Id.*

By failing to find *plain error* for violation of Rule 11 (e) (4) the 11th Circuit rendered a decision in square conflict with the decisions of this Court, the D.C. circuit, and the 1st, 2nd, 6th and 8th CIRCUITS.

II. THE DECISION OF THE ELEVENTH CIRCUIT TO FAIL TO FIND REVERSIBLE ERROR FOR BREACH OF THE PLEA AGREEMENT IS IN CONFLICT WITH THIS COURT AND IN CONFLICT WITH ITS OWN PRIOR DECISIONS.

The court of appeals is in total conflict with *U.S. v. Taylor,* (11th Cir. March 8, 1996) regarding breach of the plea agreement by the government. The plea agreement specifically stated the government would be unopposed to probation, the government argued at sentencing in favor of enhancements to obtain a guideline that did not allow for probation. The following language was drafted and included *by the government* in the Plea Agreement as the PRIMARY INDUCEMENTS for the Appellant to enter into the plea agreement, to wit:

> (b) Recommendations: Pursuant to Rules 11(e) (1) (B) and 20 (b), Fed.R.Crim.P., and upon the Court's acceptance of the aforesaid pleas and entry of the judgment on the same, **the United States will recommend *in each case* that the defendant receive a sentence at the low end of the guideline range determined by the Court including credit for a two-level reduction for acceptance of responsibility, upon doing so. The United States also states:**
> (1) The United States **does not oppose** probation with or without conditions of confinement if available under the Guidelines.
> (2) The United States recommends that sentencing for both cases be scheduled at the same sentencing hearing.

R2-52. At the sentencing hearing the government argued FOR three enhancements (none of which were in the indictment or the plea agreement) that resulted in raising the guideline level so as to guarantee imprisonment, the government argued AGAINST downward departure, and AGAINST sentencing at the low end of the guideline actually seeking a term of imprisonment for 18 months, even though the plea agreement guaranteed Maxwell that the government was *unopposed to probation*. The government violated three major *inducements* that had enticed Maxwell to enter into the plea agreement. One example of the government's breach is shown below where, at Sentencing, the government aggressively argued in favor of adding enhancements to increase the Guideline to a level where probation (though *unopposed* by contractual plea agreement) was not an option, the A.U.S.A. argued against Appellant's objections to an enhancement for "more than minimal planning" on the Houston charge of filing a false claim, to wit:

> MR. BRUNSON: Judge, if I may be heard on this if the Court cares to?
>
> THE COURT: Yes.
>
> MR. BRUNSON: In the Texas Case, there were three counts. The last two counts occurred in April where he presented bogus amended returns in order to get a refund, which were false claims charged, although counts that are dismissed. Count one admittedly was the presentation of one check, but in follow up after presenting that check as the presentence report states in Paragraph 32 through 35 that counsel went through a while ago, the defendant had numerous conversations with the IRS employees attempting to get them to take the check. And those follow-up conversations were multiple events taking place over a period of time in order to cause this check to be accepted in addition to the returns filed in April.
>
> THE COURT: I think its due to be applied.

R9-27. The court of appeals decision conflicts with this Court in *Santobello v. New York,* 404 U.S. 257 and with its own ruling in *U.S. v. Taylor,* (11th Cir. March 8, 1996) and three other prior decisions, to wit:

> **The government is bound by any material promises it makes to a defendant as part of a plea agreement that induces the defendant to plead guilty.** *E.g., Santobello v. New York,* 404 U.S. 257, 262, 92 S.Ct. 495, 499, 30 L.Ed.2d 427 (1971) **("[W]hen a plea rests in any significant degree on a promise or agreement of the prosecutor, so that it can be said to be part of the inducement or consideration, such promise must be fulfilled.");** *see also United States v. Rewis,* 969 F.2d 985, 988 (11th Cir.1992);

United States v. Boatner, 966 F.2d 1575, 1578 (11th Cir.1992); *United States v. Carrazana,* 921 F.2d 1557, 1568 (11th Cir.), *cert. denied,* 502 U.S. 865, 112 S.Ct. 191, 116 L.Ed.2d 152 (1991). Furthermore, **"[w]hether the government violated the agreement is judged according to the defendant's reasonable understanding at the time he entered his plea."** *Boatner,* 966 F.2d at 1578; *see also Rewis,* 969 F.2d at 988.

In this case, the government unequivocally promised that it would "mak[e] a recommendation at the time of sentencing that the defendant be sentenced to a period of incarceration of ten years," with the only qualification being that it would recommend a sentence of less than ten years if Taylor provided assistance to the government (something that never occurred). **It was entirely reasonable for Taylor to understand the government's promise to recommend a ten-year sentence as including a promise not to advocate that the court adopt a position that would require a sentence longer than ten years.** Indeed, that is the only reasonable interpretation. **Advocacy of a position requiring a greater sentence is flatly inconsistent with recommendation of a lesser sentence.**

In the similar case of *Boatner,* we held **that when the government's statements regarding the PSI are inconsistent with the plea agreement, the government has breached that agreement.** 966 F.2d at 1578-79; *see also United States v. Jefferies,* 908 F.2d 1520, 1527 (11th Cir.1990) (holding that when plea agreement stipulates a particular fact, the government cannot later argue in contradiction of that fact); *United States v. Tobon-Hernandez,* 845 F.2d 277, 280 (11th Cir.1988) (same). In *Boatner,* the government had stipulated in the plea agreement that two ounces of cocaine would be the only quantity considered for sentencing purposes. Even so, "the government supported the information contained in the presentence investigation report by declaring to the court that its later investigations had revealed that the amount of cocaine involved was actually between two and three-quarters and three kilograms." 966 F.2d at 1579. We held that because the information concerning

> two to three kilograms of cocaine was specifically precluded by the plea agreement, the government had breached that agreement by supporting the information contained within the PSI. *Id.; see also United States v. Canada,* 960 F.2d 263, 268 (1st Cir.1992) (holding that government breached the plea agreement when, at the sentencing hearing, it "affirmatively supported a higher sentence than that upon which the parties had agreed" and "failed to apprise the court of [the defendant's] cooperation").
>
> Although we recognize that *Boatner* involved the breach of a factual stipulation contained within the agreement, whereas this case involves a breach of a promise to recommend a particular sentence, we think the reasoning of *Boatner* applies equally in this case. **In both situations, the defendant reasonably relied upon a promise made by the government in the plea agreement, and in both situations the government advocated a position taken in the PSI that was incompatible with fulfillment of the promise.**

Id. The court of appeals decision conflicts directly with its own decision in *U. S. v. Boatner,* 966 F.2d at 1578 where it reiterated two of its previous decisions holding that "advocacy of a position requiring a greater sentence is flatly inconsistent with recommendation of a lesser sentence." The government continuously prodded the district court to be aware of numerous allegations (all unsupported) that would eventually lead the district court to sentence Maxwell to a higher sentence based on added enhancements and to the high end of the guideline based on the government's prodding hinged on the baseless allegation that Maxwell failed to cooperate with the probation officer, to wit:

> MR. BRUNSON: Your Honor, may I make a point as the Court goes forward in this grouping?
> THE COURT: In this grouping of what?
> MR. BRUNSON: Grouping of items that the defendant is objecting to.
> THE COURT: Yes.
> MR. BRUNSON: The probation officer indicated that the defendant failed to cooperate with her as regards to his financial disclosure. And much of

> the information, the probation officer had to obtain from third parties. And in the defendant's objections, he's come along and objected to some of these items as if he gave the information, whereas the Court should be aware that he failed to cooperate in that manner.
> THE COURT: I am aware of that.

R9- 32. Maxwell had filed objections to the TOTALLY FALSE statements in the PSI that claimed that *"Mr. Maxwell began moving everything into other peoples' names to protect his assets from the IRS . . . It is also alleged that some businesses were put into the name of John Michael Coy."* With regard to those statements in Paragraph 79 of the PSI, the following colloquy occurred, to wit:

> THE COURT: This is information that the probation officer says that she determined. This is not weighing in any way - - this information in Paragraph 79, let me state for the record, does not weigh in any way on this Court's determination to a sentence.
> MR. DEMPSEY: Your Honor, if it doesn't weigh in any way, could we ask that it be deleted from the presentence report?
> MS. ALEXANDER: Your Honor, I believe that Ms. Freeman added that statement to show that the defendant did not fulfill his responsibility in showing his ability or inability to pay a fine.
> MR. BRUNSON: **Your honor, if necessary, we will be prepared to present evidence to support that paragraph.**
> THE COURT: I'm going to leave it, particularly in view of the government's statement that it can present evidence.

R9-35 (Emphasis added). It was at this point in the Sentencing Hearing that, when Maxwell's court-appointed counsel was pleading with the district court to consider that the Plea Agreement recommended the low end of the Guideline, that the government SHOULD HAVE taken its cue and stepped in and stated to the district court that, "YES, pursuant to our agreement we unequivocally *recommend* the low end of the guideline." But such was NOT to be. Rather, it was at this point that the government jumped in and pointed out to the court, in essence, that she had already given a reduction for acceptance, which shouldn't have been done in the government's opinion (in deference to the plea agreement), and, then the government clearly conveyed the message that if you are going to give the reduction for acceptance then you certainly should NOT *also* sentence Maxwell at the low end of the guideline, to wit:

> THE COURT: Mr. Brunson.
>
> MR. BRUNSON: Judge, two points. First of all, counsel brought up the recommendation from the government in the plea agreement. The government did recommend the low end. The government, **however**, also recommended a two-level reduction for acceptance of responsibility. The Court has already awarded the defendant two levels for acceptance. And Judge, our plea agreement states something to the effect upon him accepting responsibility. The defendant has stood here and said everything was not wrong and much of this was construed as criminal. He has also filed this motion to withdraw his plea having no basis whatsoever. And **all of those factors, Judge, are matters the Court should consider in at least balancing a sentence here, although the Court did award him acceptance of responsibility**. Acceptance of responsibility in the Guidelines is something where a defendant makes clear acceptance of responsibility. He hasn't done that, Judge.

R9-80-81. Though patently clear that the court of appeals decision conflicts with this exact issue in *United States v. Boatner*, 966 F.2d 1575, 1578 (11th Cir.1992), where this Court found that *"advocacy of a position requiring a greater-sentence is flatly inconsistent with recommendation of a lesser sentence" Id.*, the court of appeals does not even mention the contractual stipulation that the government was required to recommend sentencing at the low end of the guideline. The court of appeals does not even broach the subject. Its decision provides no explanation as to why it was not a breach of the agreement for failure by the government to recommend sentencing at the low end of the guideline.

By failing to find that the plea agreement was nullified by the government's breach of the agreement, the 11th Circuit rendered a decision in square conflict with the decisions of this Court in *Santobello v. New York,* 404 U.S. 257, and in conflict with four of its own prior decisions which relied on the teachings of *Santobello.*

III. THE DECISION OF THE 11TH CIRCUIT TO FAIL TO FIND PLAIN ERROR FOR VIOLATION OF RULE 11 (e) (1) IS IN CONFLICT WITH THE FIRST, SECOND, FIFTH, SIXTH, AND NINTH CIRCUITS AND IN CONFLICT WITH IT OWN PRIOR DECISIONS.

The court of appeals decision directly conflicts with the mandates of its own decision that "Rule 11's prohibition on court participation in plea negations is designed to totally eliminate judicial pressure from the plea bargaining process." *United States v. Cassllas,* 59 F. 3d 1173, 1178 (1th Circuit 1995) (quoted from *United States v. Corbitt,* 996 F.2d 1132, 1135 (11th Circuit 1993) which fully adopts the holdings in *U.S. v. Barrett,* 982 F.2d 193 (6th Cir. 1992), *U.S. v. Werker,* 525 F.2d 198 (2nd Cir. 1976), *U.S. v. Bruce,* 978 F.2d 552 (9th Cir. 1992), and *U.S. v. Adams,* 634 F.2d 830 (5th Cir. 1981) as well as numerous other Circuit Court decisions. To create a basis for this conflicting decision, the court of appeals created a complete new set of facts by stating,

> Maxwell and co-defendant Lake *requested* that they be permitted to proceed pro se. Consequently, the district judge conducted a hearing pursuant to Rule 44, F.R.Crim.Pro, for each defendant to determine whether either or both of the defendants should be allowed to proceed pro se.

Decision at 5. (Italics emphasis added). As that statement is couched in the decision no two back-to-back sentences ever written could be more incorrect. The Record shows that Maxwell and Lake were indicted on July 31, 1997. Maxwell was arrested in Houston on August 6, 1997. Following a detention hearing on the *misdemeanor* charge of IRC 7212(a), non-violent obstruction of IRS administration carrying a one-year statutory maximum. On August 21, 1997, Maxwell and Lake appeared for arraignment before Judge Robert Armstrong. The "Courtroom Notes" that are part of the Record of that proceeding state, to wit:

> NG plea entered on behalf of each dft – examination and finding of competency of right to waive counsel by the Court . . . Attorney NOT present; each dft to represent himself." *See* Docket Sheet Courtroom Notes 8/21/97. Eleven days later Magistrate Robert R. Armstrong issued an Order that stated, "both dfts appeared before RRA for arraignment; dfts stated they wanted to represent themselves; dfts were strongly urged not to undertake their own representation; both understood their rights to be represented by counsel and waived that right; both dfts are declared pro se dfts.

See Docket Sheet Entry No. 10. The court of appeals claims that a Rule 44 hearing was held December 12, 1997, some five months AFTER the August 21, 1997 Rule 44 hearing held by Judge Robert R. Armstrong, for the express purpose of doing EXACTLY what Judge Armstrong had already done. Nothing in the Record denotes that anything occurred between August 21, 1997 and December 12, 1997 where Maxwell or Lake "*requested* that they be permitted to proceed pro se." Maxwell had already been pro se for five months. Prior to the December 12, 1997 hearing before the district judge, Maxwell had filed a pro se Motion to Quash the Indictment, had requested Rule 16 Disclosures in his pro se capacity, had moved to compel production of disclosures and had filed a pro se Motion for Continuance that was GRANTED by the district judge. Maxwell was as "pro se" as "pro se" could get. The court of appeals fails completely to show any basis whatsoever of how they make the finding that Maxwell or Lake, five months into the litigation, made a "request that they be permitted to proceed pro se" when they were ALREADY pro se. The fact that the district judge desired to *personally*[1] convene a hearing that three years after the fact has now been determined to have been a Rule 44 hearing, did NOT originate from any *request* by the defendants.

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[1] Notwithstanding the fact that the *pro se* competence examination occurred five months earlier, the court of appeals should know that talking with defendants directly presents potential peril for a district judge because of the *possibility* that a "coercive utterance" may cause the defendants to believe a judge has predetermined their guilt. Of course nothing in the plea coercion hearing was even close to any action under Rule 44.

The court of appeals memorialized the following statements in its decision holding that "At Maxwell's December 12, 1997, hearing, conducted pursuant to Rule 44, F.R.Crim.Pro, the following **relevant exchanges** occurred":

> THE COURT: Do you understand – and again, I have no idea, but the government might be willing to work with one or both of you or one of you separately if you had an attorney, and **to work out some sort of PLEA AGREEMENT that might be MORE BENEFICIAL to you than if you went to trial on the charges.** *Do you understand that?*

Decision at 7. The district court made the following statement to Maxwell's co-defendant Harold Lake in the *so-called* Rule 44 hearing, one week earlier on December 5, 1997:

> THE COURT: . . . the government might be coming to one of you, or maybe you, **and not Mr. Maxwell,** to offer a **better sentence** or **deal** in exchange for cooperation in the government's case **AGAINST MR. MAXWELL.**

(*See* Transcript of Hearing with Co-defendant Lake attached hereto as Addendum 1, P8). The court of appeals decision is in direct conflict with *United States v. Cassllas,* 59 F. 3d 1173, 1178 (1th Circuit 1995) (quoted from *United States v. Corbitt,* 996 F.2d 1132, 1135 (11th Circuit 1993) which fully adopts the holdings in *U.S. v. Barrett,* 982 F.2d 193 (6th Cir. 1992), *U.S. v. Werker,* 525 F.2d 198 (2nd Cir. 1976), *U.S. v. Bruce,* 978 F.2d 552 (9th Cir. 1992), and *U.S. v. Adams,* 634 F.2d 830 (5th Cir. 1981)Though the court of appeals claims that the district court was just making sure that Maxwell was qualified to proceed pro se, that is clearly NOT what the district court was doing. Strict prohibition from judicial participation in a plea discussion has heretofore meant "strict prohibition." Under the court of appeals *new standard,* it no longer has that meaning. Now, according the court of appeals, if the plea discussion can be couched as a Rule 44 hearing, plea discussions are allowed and Rule 11 (e) (1) is farcical and the words have no meaning.

The court of appeals also failed to address the issue as to why the district judge always concluded her questions regarding *plea agreement* and *pleading guilty* by demanding to Maxwell, "Do you understand that?" In so doing, she forcibly drew Maxwell into the plea discussion. Following the *"relevant exchanges"* memorialized in its decision the court of appeals held (the inserted footnotes are petitioner's and are not in the court of appeals decision, inserted for clarity and refutation):

> Maxwell argues that the above-quoted language from the Rule 44 Hearing, as well as the colloquy during the plea hearing itself, violates Rule 11 (e). Rule 44 provides, "Every defendant who is unable to obtain counsel shall be entitled to have counsel assigned . . . unless the defendant waives such appointment." Maxwell indicated that he wanted to proceed without counsel.[2] A defendant in a criminal trial has a constitutional right to proceed without counsel when he knowingly, voluntarily, and intelligently elects to do so.[3] *See Farretta v. California,* 422 U.S. 806, 833-836 . . . But **before** being allowed to waive the benefit of counsel[4] an accused 'should be made aware of the dangers and disadvantages of self-representation, so the record will establish that 'he knows what he is doing and his decision is made with open eyes." *Id.* At 835. . . . The portions of the Rule 44 hearing that Maxwell contends are improper plea negotiations are nothing more than the court informing the defendant

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[2] Again the Court has misstated crucial facts. Maxwell did NOT indicate to the district judge that he wanted to proceed without counsel. Maxwell had already been pro se for five months. Why would he indicate that he wanted to do something he had already been doing for five months? But this misstatement of facts appears to be necessary if a justification is needed for why the judge was having a hearing.

[3] As the Record shows, Magistrate Judge Robert Armstrong had determined five months earlier that Maxwell had knowingly, voluntarily, and intelligently elected to proceed without counsel. The court of appeals' holding is based completely on a false premise unsupported by anything in the record. Once the *false premise* is planted and nurtured, it provides the basis for additional errant findings and ultimately a fatally defective conclusion.

[4] If this had actually been the intent of the district court to do something BEFORE Maxwell waived his right to counsel, it was five months too late.

> of the difficulties inherent in any criminal trial and putting the defendant on notice of the charges, defenses and possible penalties as required in *Faretta*.

The court of appeals completely ignored the record evidence that the district judge *suggested* to co-defendant Harold Lake that a "deal" or "better sentence" might be coming his way *if* he was willing to cooperate with the government **"AGAINST MR. MAXWELL."** The district judge conveyed this in such a manner as to cause Lake (or any thinking person) to know that she had already decided Maxwell was guilty. This occurred a week *before* the district judge, five months into the prosecution, had ever laid eyes on Maxwell. The district judge also conveyed that she believed Lake was guilty because she suggested he could get a "better sentence" and innocent people do not get sentenced. The district court's *neutrality* was a fiction, notwithstanding that she had just DENIED a motion to recuse judge that was filed just weeks earlier because of other statements that she had made that showed clear prejudice against the defendants. The district judge, in suggesting to Lake that the government would offer him a "deal" or a "better sentence in exchange for cooperating with the government in its case against Maxwell" was literally a solicitation to Lake to *enter into a plea agreement that would provide for preferential treatment in exchange for testimony.* **The district judge was working *for* the government to help them in their case AGAINST MAXWELL.**

This creates the question for this Court to review as to why the court of appeals believes that such statements were *"intend[ed] to make Maxwell and Lake aware of the dangers and disadvantages of self-representation, so the record will establish that they knew what they were doing and their decision is made with open eyes*? This creates the question for this Court to review as to why the court of appeals found that the district court's statements were *"nothing more than the court informing the defendant of the difficulties inherent in any criminal trial and putting the defendant on notice of the charges, defenses and possible penalties."* What part of the district judge's suggesting to Lake that the government might be willing to cut him a deal for a better sentence if he was willing to "cooperate with the government against Maxwell" was meant to make Lake *"aware of the dangers of self-representation?"* What part of the district judge's suggesting to Maxwell that the government "might be willing to work out some sort of **plea agreement** that might be **more beneficial to you than if you went to trial** on the charges" is *"nothing more than the court informing the defendant of the difficulties inherent in any criminal trial and putting the defendant on notice of the charges, defenses and possible penalties."* The court of appeals is in square conflict with the Sixth circuit in *U.S. v. Barrett*, 982 F.2d 193 (6th Cir. 1992), to wit:

> Rule 11 is obviously intended *totally* to eliminate pressures emanating from judicial involvement in the plea bargaining process . . ." *Werker*, 535 F.2d at 203 (emphasis added). **By trying to FACILITATE A PLEA BARGAIN, the judge indicated that he desired an agreement; this is pressure enough.** Barrett must be allowed to withdraw his guilty plea.
>
> The dangers of judicial participation in plea bargaining are not limited to its coercive potential. **There is also a real danger that a judge's NEUTRALITY can be compromised.** The District Judge's knowledge of the status of plea negotiations and of the progress of the Defendant's pre-trial investigation caused him to make statements indicating that his neutrality was compromised in this case. **Judicial neutrality is as important when he pleads guilty as when a case goes to trial, because participation in plea negotiations can interfere with a judge's ability to determine objectively whether a Defendant's guilty plea was voluntary.** Advisory Committee Nomes, 62 F.R.D. at 284.
>
> This is one of the rare cases in which a judge's predisposition to find a Defendant guilty is apparent from the record. The judge's statements that in his opinion the Defendant had no case, and that he was not surprised that the investigator had been unable to locate any alibi witnesses, go beyond mere predisposition. **THEIR UTTERANCE IS COERCIVE. The Defendant was faced with the choice of pleading guilty or taking his chances at trial in front of A JUDGE WHO SEEMED ALREADY TO HAVE MADE UP HIS MIND ABOUT THE DEFENDANT'S GUILT. This is the kind**

> **of choice Rule 11 was designed to eliminate.**

Id. As in *Barrett,* numerous *coercive utterances* by the district court caused defendant Maxwell to form the opinion that the district court had already made up her mind about his guilt.

The court of appeals decision conflicts with *U.S. v. Adams,* 634 F.2d 830, 840, 841 (5th Cir. 1981) to wit:

> In the first place, judicial participation in plea negotiations is likely to impair the district court's impartiality. **The judge who SUGGESTS OR ENCOURAGES A PARTICULAR PLEA BARGAIN may feel a personal stake in the agreement (and in the quick disposition of the case made possible by the bargain) and may therefore resent the defendant who rejects his advice.** "[W]e [cannot] fail to consider the subtle pressures that may be exercised by a judge against a defendant who rejects an opportunity, presented by such a response as the judge here proposes to make, the acceptance of which may relieve the judge of a lengthy trial." *United States v. Werker, supra* at 202. . . . Having failed to strike a deal with the prosecutor, however, a defendant ordinarily has the option of proceeding to trial before a judge and jury who were not parties to the plea negotiations. **The defendant loses this alternative when the judge becomes a participant in the plea bargaining process, for the judge will then have heard for himself the confessions — both implicit and explicit — arising from the defendant's participation in plea negotiations.** *United States v. Werker, supra* at 202, 204; Note, "Plea Bargaining and the Transformation of the Criminal Process," 90 *Harv.L. Rev.* 564, 584-85 (January, 1977); W. S. White, "A Proposal for Reform of the Plea Bargaining Process," 119 *U.Pa.L.Rev.* 439, 452-53 (1971). Of course, there is some danger to judicial impartiality whenever a judge presides over a trial after rejecting a plea bargain, even where done in full compliance with Rule 11, for the judge is at least aware of the defendant's willingness to plead guilty. See *United States v. Gallington,* 488 F.2d 637,639 (8th Cir. 1973), *cert. denied,* 416 U.S. 907, 94 S. Ct. 1613, 40 L.Ed. 112 (1974), (a trial judge may excuse himself from further involvement with the case after

> rejecting a plea, but absent a showing of actual prejudice the choice is within the discretion of the judge). **The risks to impartiality are, however, greatly multiplied when the judge participates in the negotiations leading to that bargain, for the judge thereby takes on a more personal role in the negotiations and hears for himself incriminating statements made by the defendant.**
>
> In the second place, **judicial participation in plea discussions creates a misleading impression of the judge's role in the proceedings. "As a result of his participation, the judge is no longer a judicial officer or a neutral arbiter. Rather, he becomes or seems to become an advocate for the resolution he has suggested to the defendant."** *United States v. Werker, supra* at 203.

*Id.**840, 841. The court of appeals failed to even address the record evidence that the district judge *suggested* to Lake that *"the government might be coming to one of you, or maybe you, and not Mr. Maxwell, to offer a better sentence or deal in exchange for cooperation in the government's case against Mr. Maxwell,"* she then offered to Order the AUSA to stay to work out the "deal" and she said she would keep the courthouse open for as long as necessary for Harold Lake to work out a "deal" with the government, a "deal" that included a lower sentence if he would testify against his co-defendant Maxwell. The district court was clearly prejudiced against Maxwell.

The conflict with the other circuits created by the court of appeals decision is further illuminated via consideration of the following statements made by the district judge that were *not* addressed by the appeals court. To fully see the contrast, after reading each statement, simply ask the following question: *If a defendant is presumed innocent until PROVEN guilty, and he is before the court with a NOT GUILTY plea and with no indication whatsoever that he intends to plead guilty, why would a district judge ask the defendant if he understands the benefits of pleading guilty*? The colloquy of the district court fully reveals the plea discussions, to wit:

> THE COURT: [Mr. Maxwell], *Do you understand* there is **a lower range of sentence if a person is found to come in and plead guilty and accepted responsibility?**

THE COURT: Let me go over that. Basically, what he is saying is that the minimum sentence you would be facing without any kind of motion by the government to depart downward from the sentence would be a guideline sentencing range of six to twelve months in prison. *Do you understand that*? **That would be if you came in and plead guilty . . . but if you came in and plead guilty and were not found to have obstructed justice in any way, the sentence should be basically, the sentence you would be facing would be six to twelve months in prison,** two thousand to twenty thousand dollar fine.

THE COURT: Do *you understand* that sentence **would permit the Court to place you on probation,** that range of sentence would permit **a probationary sentence.**
THE DEFENDANT: As **opposed to serving time in jail?**
THE COURT: Right.

THE COURT: And *do you understand* that if you went to trial, it would be extremely rare that you would get acceptance? In fact, I can't even think - - there's such rare instances - - that could happen in some unusual types of cases, but it would - - in this case, **I can just tell you absolutely it would not happen. If you went to trial, you would not be given a reduction for what's called acceptance of responsibility.** And if you went to trial and were found to have obstructed justice by the Court, your range of sentence would be fifteen months- - excuse me- - ten months to sixteen months and a three to thirty thousand dollar fine. *Do you understand* **that would be the maximum sentence you're facing at that point?**

THE COURT: And *do you understand* that if you went to trial and were not credited with acceptance of responsibility, and if the Court found you obstructed justice, either by committing perjury or some other way or inducing someone else to commit perjury, those are things that would be considered by the Court to be obstruction of justice, that your sentence range would be fifteen to twenty-one months and a four to forty thousand dollar fine? *Do you understand*?

> THE COURT: So again, ***you* *understand* *that*** **by pleading guilty, you're facing a greatly reduced sentence than if you go to trial,** if you're convicted and if you're found by the Court - - particularly if you're found by the Court to have obstructed justice? *Do you understand?*

Decision at 8, 9. (emphasis added.) This court of appeals included these statements in its decision yet failed to even address how the district court's redundant demanding of a response from Maxwell and Lake ("Do you understand?") that was forcing Maxwell and his co-defendant into a DISCUSSION of the "BENEFITS" of **pleading guilty** were not in violation of the controlling decisions. To summarize, the district judge asked Maxwell if he *understood* that if he would just PLEAD GUILTY:

1) it *"would permit the Court to place you [Maxwell] on probation, that range of sentence would permit a probationary sentence" Id.;*
2) that "there is a lower range of sentence if a person is found to come in and plead guilty and accepted responsibility," *Id.;*
3) that "by pleading guilty, you're [Maxwell] facing a greatly reduced sentence than if you [Maxwell] go to trial." *Id.*

The court of appeals, by finding that these statements do not constitute a plea discussion, has rendered a decision in square conflict with controlling decisions of five other circuits regarding the Rule 11 (e) prohibition against judicial participation in a plea discussion. The court of appeals *overlooked* the fact that Maxwell *responded* to the Court's soliciting communication that *"the government might be willing . . . to work out some sort of* ***plea agreement*** *that might be more beneficial than if you went to trial on the charges, Do you understand that?"* by responding, "Yes judge, I'm open to a **plea agreement discussion**, and I understand." Decision at 7, 8. Maxwell's Response showed that he thought they *were* having a plea discussion. The judge's *neutrality* was completely compromised by her continuous demands that Maxwell **discuss with her** the *benefits of pleading guilty*. The court of appeals simply chose not to acknowledge the obvious truth that the government conceded throughout the appeal.

By failing to find that *plain error* for violation of Rule 11 (e) (1), judicial participation in plea discussions, the 11th Circuit rendered a decision in square conflict with the decisions of the First, Second, Fifth, Sixth, and Ninth Circuits, of its own prior decisions which relied on the decisions of these other circuits.

IV. THE DECISION OF THE 11TH CIRCUIT TO FAIL TO FIND WANT OF TERRITORIAL AND SUBJECT MATTER JURISDICTION IS IN CONFLICT WITH THIS COURT AND WITH THE FIRST, SECOND, THIRD, FOURTH, FIFTH, SIXTH, SEVENTH, EIGHTH, NINTH, AND TENTH CIRCUITS.

The court of appeals decision conflicts directly with the decisions of the Supreme Court of the United States regarding an issue that modern day federal courts do not want argued — the issue of territorial and subject matter jurisdiction.

To fully grasp the issues of territorial and subject matter jurisdiction that were placed before the district court challenging the jurisdiction of the court, the Motion to Quash Indictment must be viewed. The motion is quite voluminous and is included in the Appendix as *Appendix B*. The essence of the territorial jurisdictional arguments is that the act occurred at the Tuscaloosa County Courthouse and was done directly and pursuant to the laws of the State of Alabama. Maxwell cited over 80 decisions including over 10 decisions of this court that held that the United States government was in want of territorial jurisdiction for an act that did not occur within the territorial boundaries of the federal United States government as defined by 18 USC § 7 and 44 USC § 255. The district court refused to even address the irrefutable arguments.

The court of appeals is in conflict with this Court's holding in *U. S. v. Adams*, 319 US 312 (1943) (In view of 40 USCS § 255, no jurisdiction exists in any of the United States to enforce federal criminal laws unless and until consent to accept jurisdiction over lands acquired by United States has been filed in behalf of United States as provided in said section). The court of appeals failed to even address the many cases cited that are in direct conflict with its decision including *People v. Godfrey,* 17 Johns. 225, 233 (N.Y., 1819) (Chief Justice Marshall observed . . . it is not (he says,) the offence committed, but the place in which it is committed, which **must be out of the jurisdiction of the state**." The phrase *"out of the jurisdiction of a particular state"* is replete throughout federal jurisdictional statutes and the Federal Rules of Criminal Procedure as the *standard* for determining federal jurisdiction.

In conflict with the many controlling decisions of the Supreme Court and numerous circuit courts cited by Maxwell, the court of appeals *castrated* a code section in its decision regarding the territorial jurisdiction of the United States District Court. The court of appeals decision erroneously claims, to wit:

> The United States District Courts have "original jurisdiction, exclusive of the courts of the States, of all offenses against the laws of the United States. 18 U.S.C. §3231 Maxwell was charged with an offense against the United States under 26 U.S.C. 7212. Therefore we find the district court has subject matter jurisdiction over this action.

Decision at 19. The court of appeals has *castrated* 18 U.S.C. §3231 by using language in the court of appeals decision that exacts the most productive language of 18 U.S.C. §3231, to wit:

> The **district courts of the United States** shall have original jurisdiction, exclusive of the courts of the States, of all offenses against the laws of the United States.

Id. It appears that the court of appeals is acutely aware of the conflict between what the statute actually states and what it memorialized in its decision. The *modification* is plainly intentional. The court of appeals, in direct conflict with this Court's holding in *Balzac v. People of Porto Rico,* 258 U.S. 298 (1922), fails to acknowledge the distinct difference between a "United States District Court" and a "district court of the United States." The court of appeals conflicts with the holding of this Court in *Balzac* by misapprehending that the United States District Court for the Northern District of Alabama is NOT a "true United States Court" to wit:

> The **United States District Court** is not a true United States court established under article 3 of the Constitution to administer the judicial power of the United States therein conveyed. **It is created by virtue of the sovereign congressional faculty, granted under article 4, 3, of that instrument, of making all needful rules and regulations respecting the territory belonging to the United States.** The resemblance of its jurisdiction to that of true United States courts, in offering an opportunity to nonresidents of resorting to a tribunal not subject to local influence, does not change its character as a **MERE TERRITORIAL COURT.**

Id. (emphasis added.) The court of appeals conflicts with this Court in *Mookini v. United States,* 303 U.S. 201 (1938), to wit:

> The term 'District Courts of the United States,' as used in the rules, without an addition expressing a wider connotation, has its historic significance. It describes the constitutional courts created under article 3 of the Constitution. Courts of the Territories are legislative courts, properly speaking, and are not District Courts of the United States. **We have often held that vesting a TERRITORIAL COURT with jurisdiction similar to that vested in the District Courts of the United States does not make it a 'District Court of the United States.'**

Id. The court of appeals has *misapprehended* the fact that a "United States District Court" such as the USDC for the ND of Alabama is a "**mere territorial court**" and, therefore, only has jurisdiction over matters that occurred on *federal territory,* meaning federal enclaves and property that exists within the boundaries of the counties listed in Chapter 5 of Title 28 for the "Northern District of Alabama" that tells us "where court is held." 18 U.S.C. 3231 only grants jurisdiction to *"district courts of the United States"* that are Article 3 Constitution Courts of the territories. Alabama is NOT a territory of the United States government. It is a sovereign Union State. The USDC of the ND of Alabama has no jurisdiction over an act that occurred at the Tuscaloosa County Courthouse or anywhere else that is NOT federal property where jurisdiction has not been transferred via

1.8.17 of the U. S. Constitution. The court of appeals failed to address Rule 54 F. R. Crim. Pro. which states that "Acts of Congress are locally applicable to and in force in the District of Columbia, in Puerto Rico, in a territory or insular possession." *Id.* The court of appeals is in conflict with the Supreme Court in *U. S. v. Adams*, 319 US 312 (1943) (In view of 40 USCS § 255, where this court held that no jurisdiction exists in any of the United States to enforce federal criminal laws unless and until consent to accept jurisdiction over lands acquired by United States has been filed in behalf of United States as provided in said section. *Id.*

By failing to find that the district court was in want of territorial jurisdiction, the 11th Circuit rendered a decision in square conflict with the decisions of this Court, the First, Second, Third, Fourth, Fifth, Sixth, Seventh, Eighth, Ninth and Tenth Circuits.

CONCLUSON

For the foregoing reasons, this Court should grant the petition for writ of certiorari.

In view of the 11th Circuit's clear departure from the decisions of this Court, and in view of the fact that the 11th Circuit stands alone in pursuing this deviant course, in conflict with the consistent view of the other federal circuits, *see supra*, §§ I, II, III, and IV, this Court should consider disposing of this petition by summary reversal of the judgment below under Rule 16.1.

Respectfully submitted this ____ day of June, 2001.

Lawrence S. Maxwell, Sr.
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Pasadena, Texas 77503
713-475-2859

APPENDIX

Rule 14.1(i) Judgment sought to be reviewed:

A. Decision of the Eleventh Circuit Court, *U. S. v. Maxwell,* Cause No. 98-6606, issued March 30, 2001

Rule 14.1(vi) Material Petitioner believes essential to under the petition:

B. Motion To Quash Indictment - filed by Maxwell in district court challenging Territorial Jurisdiction and Subject Matter jurisdiction. [This is the motion that contains that arguments that caused the district judge to say Maxwell was "very dangerous" and from which the district court ascertained and stated that Maxwell had "illegal beliefs" and that his "thoughts and ideas were against the laws of the country."

C. Judgment in a Criminal Case – Order of the United States District Court for the Northern District of Alabama that is the FINAL ORDER from which Petitioner Appealed to the Eleventh Circuit.

IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

FILED
U. S. COURT OF APPEALS
ELEVETH CIRCUIT
MAR 30 2001
THOMAS K. KAHN
CLERK

No.98-6606

D. C. Docket No. 97-00227-CR-B-S

UNITED STATES OF AMERICA,

Plaintiff- Appellee,

versus

LAWRENCE STEPHEN MAXWELL, SR.,

Defendant -Appellant.

Appeal from the United States District Court for the
Northern District of Alabama

(March 30,2001)

Before TJOFLAT and BIRCH, Circuit Judges, and VINING*, District Judge.

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*Honorable Robert L. Vining Jr., U.S. District Court Judge for the Northern District of Georgia, sitting by designation.

Vining, District Judge:

Proceeding pro se, Lawrence Stephen Maxwell, Sr., appeals his convictions and 18-month concurrent sentences for conspiracy to obstruct and impede the due administration of the Internal Revenue laws, 26 U.S.C. §

7212(a) & 18 U.S.C. § 371, and for filing a false, fictitious, and fraudulent claim in preparation of a document, 18 U.S.C. § 287. Although Maxwell raises several issues on appeal, we find no reversal error and affirm.

I. BACKGROUND

Co-defendant Thomas Lake failed to file his 1992 federal tax return and, consequently, was contacted by the Internal Revenue Service. In June 1995, after Lake refused to respond to inquiries, the IRS levied against his account at the B. F. Goodrich Credit Union in Tuscaloosa, Alabama. As a result, Lake contacted Lawrence Maxwell for advice and discussed various methods of causing the IRS to release the levy.

In July 1995, Lake mailed a letter to James Phillips, manager of the credit union and demanded release of his funds. On August 1, 1995, Maxwell telephoned Michael Poll, attorney for the credit union and demanded release of the account. Maxwell subsequently sent letters to Poll, threatening a commercial remedy if the funds were not released and also threatening to file a criminal complaint if the levy was not lifted.

On August 18, 1995, Maxwell obtained access to the TransUnion Credit Bureau, a computerized credit reporting database. On September 7, 1995, he queried the database and obtained confidential information about six individuals--Phillips, Poll, three IRS agents, and the husband of another agent. With this information, Maxwell was able to file liens against the properties of these individuals in the Probate Courts of Tuscaloosa and Jefferson counties in Alabama.

The United States then filed for injunctive relief to restore the credit status of the individuals and to restrain Lake and Maxwell from filing any more fraudulent liens. The United States District Court for the Northern District of Alabama granted summary judgment to the United States and entered the injunction on May 23, 19-96. *United States* v. *Maxwell,* Civil Action No. CV95-P2698W.

On November 22, 1995, Maxwell presented to the IRS in Houston, Texas, a worthless bank draft entitled "Comptroller Warrant, certified bankers check" in the amount of $35,000 and a letter requesting a tax refund.[5] The check and letter were presented to the IRS in order to satisfy Maxwell's tax liability of $22,700. Two grand juries returned indictments against Maxwell: one in the Northern District of Alabama and one in the Southern District of Texas. The Alabama indictment was in eight counts, including charges of conspiracy and obstructing the due administration of the Internal Revenue laws in violation of26 U.S.C. § 7212(a) and 18 U.S.C. § 371. In the Texas case, the superseding indictment was in three counts charging Maxwell with, inter alia, filing a false, fictitious, and fraudulent claim in preparation of a document in violation of 18 U.S.C. § 287. The Texas action was transferred from the Southern District of Texas to the Northern District of Alabama by the consent of the parties pursuant to Rule 20, Federal Rules of Criminal Procedure. The district judge conducted two hearings that form the basis for this appeal. Maxwell and co-defendant Lake requested that they be permitted to proceed pro se. Consequently, the district judge conducted a hearing pursuant to Rule 44, Federal Rules of Criminal Procedure, for each defendant to determine whether either or both of the defendants should be allowed to proceed pro se. The court subsequently conducted a plea hearing pursuant to Rule 11, Federal Rules of Criminal Procedure, at which time the court rejected Maxwell's request that he be allowed to withdraw his plea. Maxwell was sentenced to serve 18 months under Count One of each indictment, with the terms to run concurrently.[6]

On appeal, Maxwell contends that his plea and sentence should be set aside for the following reasons: (1) the district court participated in plea discussions in violation of Rule 11 (e), thus rendering his guilty plea invalid and requiring withdrawal of his guilty plea and new proceedings before a different judge; (2) the district court abused its discretion in denying his motion to withdraw his plea; (3) the Government breached the plea agreement; (4) the district court erred in determining (a) that the Government officials involved were victims of the offense under U.S.S.G. § 3Al.2, because the only victim in the offense to which he pled guilty was the Government itself, (b) that the offense involved more than minimal planning under U.S.S.G. § 2Fl.l(b)(2)(A), since it included relevant conduct for which he was not convicted, and (c) the amount of loss under U.S.S.G. § 2Fl.l(b)(I), since it included relevant conduct for which he was not convicted; and (5) that the Government was barred from prosecuting him under the doctrine of res judicata and that the district court did not have territorial and subject-matter jurisdiction over his cases.

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[5] According to the representations made at the time of Maxwell's sentencing, the check came from a California group which had placed a lien against the United States in the amount of $100,000,000.00, and the warrants were issued against that lien. R8-52-53.

[6] Count One of the Alabama indictment charged Maxwell with conspiracy to obstruct and impede the due administration of the internal revenue laws; Count One of the Texas indictment charged him with filing a false, fictitious, and fraudulent claim with a federal agency.

II. DISCUSSION

We review judicial participation in plea discussions for plain error. *United States* v. *Corbitt,* 996 F .2d 1132, 1135 (11th Cir. 1993). We review a district court's denial of a motion to withdraw a guilty plea under Rule 32(e) for an abuse of discretion. *United States v. Siegel,* 102 F.3d 477,480 (11th Cir. 1996). We review issues raised for the first time on appeal for plain error only. *United States v. Mahique,* 150 F.3d 1330,1332 (1lth Cir. 1998). Whether the Government has breached a plea agreement is a question of law that this court reviews *de novo. See United States v. Carlson,* 87 F .3d 440, 447 (11th Cir. 1996). If, however, the II district court affords a defendant an opportunity to object after the imposition of sentence, and he fails to do so, any objections to the sentence are barred" absent plain error. *United States v. Mahique,* 150 F.3d 1330,1332 (1lth Cir. 1998)(citations omitted). We review the sentencing court's findings of fact for clear error and review the application of the Sentencing Guidelines to the facts *de novo. See United States v. Jennings,* 991 F.2d 725,732
(11th Cir. 1993).

At Maxwell's December 12, 1997, hearing, conducted pursuant to Rule 44, Federal Rules of Criminal Procedure, the following relevant exchanges occurred:

THE COURT: Do you also understand --and again, I have no idea, but the government might be willing to work with one or both of you or one of you separately if you had an attorney and to work out some sort of a plea agreement that might be more beneficial to you than if you went to trial on the charges. Do you understand that?

THE DEFENDANT: Yes, Judge. And Mr. Whisonant [the Assistant United States Attorney] and I have talked several times now about that. And, you know, I'm open to a plea agreement discussion, and I understand.

R7-11-12

THE COURT: Do you understand that there's a lower range of sentence if a person is found to have come in and pled guilty and accepted responsibility?

THE DEFENDANT: Yes, Judge.

THE COURT: And I'm not saying this in any way to encourage you to plead guilty. I want to inform you of what you're facing and make sure you understand the possible range of sentence if you are found guilty.

Id. at 27

THE COURT: Let me go over that. Basically, what he's [the AUSA] saying is the minimum sentence you would be facing without any kind of motion by the government to depart downward from this sentence would be a guideline sentencing range of six to twelve months in prison.

Do you understand that? That would be if you came in and pled guilty and were not found in any way by the Court to have obstructed justice prior to having pled guilty .It is rare that a defendant would be found to have obstructed justice if he pled guilty, but it's possible that those two could offset each other.

But if you came in and pled guilty and were not found by the Court to have obstructed justice in any way, the sentence should be basically, the sentence you would be facing would be six to twelve months in prison, a two thousand to twenty thousand dollar fine. Is that what you said?

MR. WHISONANT [the AUSA]: Yes, ma'am.

THE COURT: Do you understand that would be the sentence you are facing?

THE DEFENDANT: Yes, Judge.

THE COURT: Do you understand that sentence would permit the Court to place you on probation, that range of sentence would permit a probationary sentence?

THE DEFENDANT: As opposed to serving time in jail?

THE COURT: Yes.

THE DEFENDANT: Yes, Judge.

THE COURT: And do you understand that if you went to trial, it would be extremely rare that you would get acceptance? In fact, I can't even think- there's such rare instances -that could happen in some unusual types of cases, but it would be -in this case, I can just tell you absolutely it would not happen.

If you went to trial, you would not be given a reduction for what's called acceptance of responsibility. And if you went to trial and were not found to have obstructed justice by the Court, your range of sentence would be fifteen months -excuse me -ten months to sixteen months and a three thousand to thirty thousand dollar fine. Do you understand that would be the maximum sentence you would be facing at that point?

THE DEFENDANT: Yes, Judge.

> THE COURT: And do you understand that if you went to trial and were not credited with acceptance of responsibility, and if the Court found you did obstruct justice, either by committing perjury or some other way or inducing someone else to commit perjury, those are things that would be considered by the Court to be obstruction of justice, that your sentence range would be fifteen to twenty-one months and a four thousand to forty thousand dollar fine? Do you understand?
>
> THE DEFENDANT: Yes, Judge.
>
> THE COURT: So again, you understand that by pleading guilty, you're facing a greatly reduced sentence than if you go to trial, if you're convicted and if you're found by the Court -particularly if you're found by the Court to have obstructed justice? Do you understand?
>
> THE DEFENDANT: Yes, Judge.
>
> *Id.* at 28-30

Rule 11(e), Federal Rules of Criminal Procedure, provides, "The court shall not participate in any discussions between the parties concerning any such plea agreement." "Rule 11's prohibition on court participation in plea negotiations 'is designed to totally eliminate judicial pressure from the plea bargaining process." *United States* v. *Casallas,* 59 F.3d 1173,1178 (11th Cir. 1995)(quoting *United States* v. *Corbitt,* 996 F.2d 1132, 1135 (11th Cir. 1993)). We have interpreted Rule 11(e) as a "bright line rule" "'prohibiting] the participation of the judge in plea negotiations under any circumstances: it is a rule that, as we have noted, admits of no exceptions. '" Id. at 1177 (quoting *United States* v. *Bruce,* 976 F.2d 552,558 (9th Cir. 1992); *see also United States* v. *Adams,* 634 F.2d 830,839 (5th Cir.1981)("Rule 11(e)(I) establishes an absolute ban on judicial participation [in plea negotiations].").

Maxwell argues that the above-quoted language from the Rule 44 hearing, as well as the colloquy during the plea hearing itself, violates Rule 11 (e).[7] Rule 44 provides, "Every defendant who is unable to obtain counsel shall be entitled to have counsel assigned . . . unless the defendant waives such appointment. " Maxwell indicated that he wanted to proceed without counsel. A defendant in a criminal trial has a constitutional right to proceed without counsel when he knowingly, voluntarily, and intelligently elects to do so. *See Faretta* v. *California,* 422 U.S. 806, 833-836, 95 S.Ct. 2525, 2540-42, 45 L.Ed.2d 562 (1975). But before being allowed to waive the benefit of counsel, an accused "should be made aware of the dangers and disadvantages of self-representation, so that the record will establish that 'he knows what he is doing and his decision is made with open eyes."' *Id.* at 835,95 S.Ct. at 2541 (citation omitted). *In Fitzpatrick v. Wainwright,* 800 F.2d 1057,1065-67 (1lth Cir. 1986), this court enumerated the factors we consider when determining whether a record establishes a knowing, voluntary, and intelligent waiver. Included in that list is "the defendant's knowledge of the nature of the charges, possible defenses, and penalties. " *Id.* The portions of the Rule 44 hearing that Maxwell contends are improper plea negotiations are nothing more than the court informing the defendant of the difficulties inherent in any criminal trial and putting the defendant on notice of the "charges, defenses, and possible penalties" as required by *Faretta.* In *United States* v. *Diaz,* 138 F.3d 1359, 1363 (1lth Cir. 1998), however, we held that "because the sentencing judge took an active part in discussing [the defendant's] probable sentence before the time of his conviction and because [the district judge] commented on the weight and nature of the evidence against him, ...the court violated Rule 11(e)(I).'1 The district court in the instant case discussed the possible range of sentence with Maxwell as part of a colloquy meant to determine whether his decision to proceed pro se was made with open eyes. " She did not comment on the weight of the evidence or what sentence she was likely to impose. She told him the lowest and highest possible sentence he could receive and the factors on which the sentence could be based. In *United States v. Casallas*, 59 F.3d 1173,1177 (11th Cir. 1995), we held that a judge violated Rule 11(e) when he stated that the defendant would get the mandatory minimum sentence of ten years if he "pleads this afternoon " and followed that statement with additional advice that the defendant "talk to his lawyer some and see if that is really what he wants to do." We held that although those "comments were innocuous and intended only to insure that Casallas was making an informed decision, our precedent on the issue requires reversal." *Id.*

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[7] The court notes that Maxwell's Rule 44 hearing was conducted three months prior to his indictment in Texas, on March 4,1998; thus, even if the district court had committed error at the Rule 44 hearing, such error would not have infected the Rule 11 hearing as it
pertained to the Texas indictment.

The difference between the instant case and our precedent on Rule 11 (e) and plea negotiations is that the statements at issue occurred not at a plea hearing, but during a Rule 44 hearing at which the district judge was required to notify the defendant of the perils and risks he faced in proceeding pro se. Any comments made by the district judge were for this purpose and not in the context of plea negotiations. We instruct the district judges that any participation in plea negotiations is strictly prohibited but, at the same time, direct them to participate in an eight-factor discussion to warn them of the risks of acting pro se. At times, this can be a perilous task. In the instant case, however, we hold that the district judge's comments during the Rule 44 hearing did not violate Rule 11 (e) because they were required by *Faretta* and because the Rule 44 hearing did not concern plea negotiations.

Maxwell also alleges that during the Rule 44 hearing, the district judge essentially promised him probation if he pled guilty .We reject this contention. A careful reading of the judge's comments shows that the district judge was clearly referring to the lowest range of sentence that was possible based on the facts known to the judge at that time. We also note that Maxwell is particularly sophisticated in legal matters and could not reasonably have believed he was being promised probation. *See, e.g., Casallas,* 59 F.3d at 1177 n. 7. Maxwell stated during the Rule 44 hearing that he had participated in as many as eight trials and he drafted many of the pleadings in this case.

Maxwell further alleges that statements made by the district judge during his plea hearing were impermissible plea negotiations in violation of Rule 11(e). The plea hearing began with the district judge's first asking Maxwell if he intended to change his not guilty plea, to which he responded in the affirmative, and then the judge's asking him if he was prepared to enter a plea to the charge in Count One of the indictment in the Alabama case. Maxwell said he was prepared and then pled guilty .He was then asked if he was prepared to enter a plea to the charge in Count One of the indictment in the Texas case, to which he replied yes and pled guilty. After Maxwell entered his plea, the Assistant United States Attorney [I! A USA "] stated for the record the plea agreement reached between the Government and Maxwell. The statements that Maxwell alleges are impermissible plea negotiations occurred after the reading of the plea agreement by the AUSA into the record.

Rule 11(c), Federal Rules of Criminal Procedure, provides, "Before accepting a plea of guilty . . ., the court must address the defendant personally in open court and inform the defendant of, and determine that the defendant understands" several rights and effects of the plea. The court must inform the defendant of the following: (1) the nature of the charge to which the plea is offered, any mandatory minimum penalty, the maximum possible penalty, Sentencing Guidelines, and possible restitution requirements; (2) his right to have an attorney represent him; (3) his right to plead not guilty and proceed to trial; (4) that a plea of guilty or *nolo contendere* waives his right to a trial; (5) that if the court questions him under oath, on the record, and in the presence of counsel about the offense to which he is pleading, his answers may be used against him in a prosecution for perjury or false statements; and (6) the terms of any provision in a plea agreement waiving the right to appeal or to collaterally attack the sentence. *See* Rule 11(c)(I)-(6).

The statements by the district judge which Maxwell contends were plea negotiations were nothing more than the district judge's following Rule 11(c) and informing him of his rights and the effects of his plea. They were not impermissible plea negotiations. The plea agreement had already been negotiated by the Government and Maxwell and presented to the court following Maxwell's plea of guilty. The cases in which we have held that a district judge's statements were impermissible plea negotiations were cases in which there was no plea agreement or in which a plea was in the process of being negotiated at the time the statements were made. *See Casallas,* 59 F .3d 1173(statements preceded decision to plead guilty; there was no plea agreement); *see also Corbitt,* 996 F.2d 1132(statements made prior to acceptance of plea agreement); *see also Diaz,* 138 F.3d 1359(statements made prior to acceptance of plea agreement); *see also United States v. Johnson,* 89 F .3d 778 (11th Cir. 1996)(statements made when there was no plea agreement and none was contemplated). Any statements made by the district judge in the instant case after the Government and Maxwell had entered into a plea agreement that was presented to the court could not have constituted impermissible judicial participation in plea negotiations because they were not made with a view toward reaching an agreement. At the time the district judge made her comments, an agreement had already been reached. We find that the district judge's statements at the plea hearing did not violate Rule 11(e).

Maxwell argues that he should have been permitted to withdraw his guilty plea pursuant to Rule 32(e). Rule 32(e) provides, "If a motion to withdraw a plea of guilty ... is made before sentence is imposed, the court may permit the plea to be withdrawn if the defendant shows any fair and just reason." Maxwell's plea, however, was a Rule 11(e)(I)(B)-type, which the defendant has no right to withdraw. Rule 11(e)(I)(B)-type pleas are those in which the Government will "recommend, or agree not to oppose the defendant's request for a particular sentence or sentencing range, or that a particular provision of the Sentencing Guidelines, or policy statement, or sentencing factor is or is not applicable to the case." Rule 11(e)(l)(B). "Any such recommendation or request is not binding on the court. " *Id.* "If the agreement is of the type specified in subdivision (e)(l)(B), the court shall advise the defendant that if the court does not accept the recommendation or request the defendant nevertheless has no right to withdraw the plea." Rule 11(e)(2).

The district judge informed Maxwell several times during the plea hearing that, if he entered a guilty plea, he would not be able to withdraw it, and Maxwell responded by telling the court that he understood. Further, the plea agreement itself explicitly states, "If the Court decides not to give the recommended sentence, or decides that the recommended sentence is not within the Guidelines range, the defendant may not withdraw the plea of guilty." R.2-53-4 We find that, because Maxwell had no right to withdraw his plea of guilty, the district judge did not commit error in denying his motion to withdraw his guilty plea. Maxwell contends that the Government breached the plea agreement: (1) by conspiring with the probation officer to draft the presentence report to include unspecified false and irrelevant information that the Government knew would lead the court to reject the sentencing recommendations in the plea agreement; (2) by opposing sentencing him at the low end of the Guidelines range; (3) by arguing that he knew he was not guaranteed probation and that he did not have a right to appeal the issue of territorial and subject-matter jurisdiction; (4) by opposing his desire to self-surrender and by claiming that a confidential informant had notified the Government that he was a flight risk; (5) because the agreement stated that he would plea to an "information" for the Texas charge, but no information was presented. Maxwell does not state what information in the presentence report was false, and he presents no evidence that the Government conspired with the probation officer. The Government did not breach the plea agreement by conspiring with the probation officer. The Government's representation in the plea agreement that it would recommend a sentence at the low end of the Guidelines was conditioned on Maxwell's acceptance of responsibility .The Government determined that he had not accepted responsibility based on his testimony at the sentencing hearing and because he filed his motion to withdraw his guilty plea. Therefore, the Government's statement to the court that Maxwell should not be entitled to a reduction for acceptance of responsibility was not a breach of the plea agreement.

The plea agreement stated that the Government would not oppose probation with or without conditions of confinement "if available under the Guidelines." R2-52-2. A sentence consisting solely of probation was not available to Maxwell based on the Sentencing Guidelines. Therefore, any failure by the Government to recommend probation at the sentencing was not a breach of the plea agreement.

It is clear from the sentencing transcript that the Government and the court agreed with Maxwell's contention that he had a right to appeal the issue of territorial and subject-matter jurisdiction and the instant appeal includes those grounds. What the Government did argue at the sentencing hearing was that Maxwell's plea was no longer a conditional plea because it was conditioned on a specific pending appeal that had been dismissed by this court. The relevant provision of the plea agreement states, "The defendant reserves any pending rights which may emanate from his appeal to the Eleventh Circuit Court of Appeals in case number 97 -6912, including territorial and subject-matter jurisdictional issues. ..." R2-52-2. Because that appeal had been dismissed by this court, the Government did not breach the plea agreement by arguing that the plea agreement was no longer conditional.

Nothing in the plea agreement contemplates that Maxwell would be allowed to self -surrender. Therefore, the Government did not breach the plea agreement by not recommending that Maxwell be allowed to self -surrender.

Finally, nothing in the plea agreement refers to the filing of an "information" against Maxwell in the Texas case. The plea agreement states that the defendant will plead guilty to Count One of the indictment filed in the Texas case. Therefore, the Government did not breach the plea agreement by not presenting an information.

Maxwell appeals his sentence, alleging that the district court improperly applied the United States Sentencing Guidelines. Specifically, he challenges the three-level official victim enhancement in the Alabama case, the minimal planning enhancement in the Texas case, and the inclusion of certain relevant conduct in determining the amount of loss.

The Sentencing Guidelines state that a three-level enhancement should be applied if"(a) the victim was a Government officer or employee; a former government officer or employee; or a member of the immediate family of any of the above, and the offense of conviction was motivated by such status. . . ." U.S.S.G. § 3A1.2(a). Therefore, Maxwell's sentence may be enhanced under Section 3A 1.2(a) only if government agents were a victim of Maxwell's offense of conviction: conspiracy to commit offense or defraud the United States by corruptly endeavoring to obstruct and impede the due administration of the Internal Revenue Service laws in violation of 26 U.S.C. §7212(a).

Count One of the indictment in the Alabama case charges that, as part of the offense, Maxwell filed liens against several I.R.S. agents. The agents encountered various legal problems as a result of these improper liens. The district court found that Maxwell was motivated by the I.R.S. employees' official status in filing the liens. We agree and find that the district court did not clearly err in finding that the I.R.S. agents were victims under the Guidelines or in applying Section 3A1.2(a)'s three-level enhancement to Maxwell's sentence.

The Sentencing Guidelines provide for a sentence enhancement if the offense involves "more than minimal planning." U.S.S.G. § 2B1.1(b)(4)(A). Maxwell argues that this guideline should not have been applied to his sentence because he pled guilty to only one offense of the indictment in the Texas case, filing a false claim in violation of 18 U .S.C. § 287. He argues that his filing of a false claim was only one act on one day. The government contends the district court properly applied the enhancement because not only did Maxwell file a false claim, but he also made several follow-up telephone calls to I.R.S. employees in order to execute the false claim. We review a finding of more than minimal planning for clear error. *See United States* v. *Ward,* 222 F.3d 909,910 (11th Cir. 2000).

The commentary to U.S.S.G. § 1B1.1 states, "'[M]ore than minimal planning' means more planning than is typical for commission of the offense in a simple form" and "is deemed present in any case involving repeated acts over a period of time." U.S.S.G. § 1B1.1, comment. (n.1(f)). The district court found that Maxwell's follow-up phone calls were enough to show more than minimal planning under the Guidelines. To commit the offense of conspiracy to defraud the government in a simple form in this case required only the presentation of the bogus cashier's check. By attempting to secure the false refund through the use of telephone calls to I.R.S. employees, attempting to secure the false refund, Maxwell went beyond minimal planning. Therefore, we conclude that the sentencing court did not clearly err by increasing the offense level for "more than minimal planning."

The district court found that the intended loss amount was between $40,000 and $70,000, which allows for an increase of five levels to the Base Offense Level. U.S.S.G. §2F1.1(b)(1). The court based this finding on the amount of loss attributable to Count One of the Texas indictment, approximately $35,000, and the amount of the false amended refund claims in Counts Two and Three, because the court found Counts Two and Three to be part of the same course of conduct as Count One, to which Maxwell pled guilty. Maxwell contends that conduct of which he was not convicted should not have been used to calculate the amount of loss. We have held, however, that when dismissed counts are illustrative of the same course of conduct and display a common theme, "it is clear that a district court may consider losses from dismissed counts of an indictment when determining the total loss amount." *United States* v. *Rayborn,* 957 F.2d 841, 843 (11th Cir. 1992). Counts Two and Three of the Texas indictment, filing two false, fictitious or fraudulent tax returns, are clearly related to Count One, to which Maxwell pled guilty. Therefore, we find that the district court did not commit plain error in including the amount of loss from Counts Two and Three.

Maxwell also contends that the district court incorrectly calculated the potential loss in Count One, but he presents no argument as to what the error was. Therefore, we do not find that the sentencing court erred in calculating the amount of loss associated with Count One.

For the first time on appeal, Maxwell contends that the district court erred in failing to dismiss the case under the doctrine of res judicata based on the fact that the A USA had proceeded against him in a civil action, having relied on the same facts underlying the subsequent criminal charges. Because Maxwell did not raise this issue in the district court, we review for plain error only. *See Mahique,* 150 F.3d at 1332.

Res judicata bars litigation of matters decided in a prior proceeding. *See Jang* v. *United Technologies Corp.,* 206 F.3d 1147 (11th Cir. 2000). Maxwell attempts to persuade this court that, because the district court and the United States Attorney failed to raise any criminal issues in a prior civil suit in which the government obtained a permanent injunction against Maxwell and Lake, that litigation determined that there was no criminal conduct. First, it is highly unlikely that the court hearing the civil matter would make such a determination. Second, even if the court did, it would not be a binding determination in Maxwell's subsequent criminal action based on res judicata.

The government construed the res judicata argument as a double jeopardy argument. Even if we were to construe Maxwell's appeal as such, the Fifth Amendment's double jeopardy provision applies only to criminal prosecutions, not civil actions. U.S. Const. Amend. V. There has been only one criminal prosecution in this case; therefore, there is no double jeopardy issue in this case. Based on the foregoing, we find that the district court did not commit plain error in failing to dismiss this action based on the doctrine of res judicata.

Maxwell contends that the district court committed error by denying his motion to quash the indictment based on lack of subject matter and territorial jurisdiction. The United States District Courts have "original jurisdiction, exclusive of the courts of the States, of all offenses against the laws of the United States." 18 U.S.C. § 3231. Maxwell was charged with an offense against the United States under 26 U.S.C. § 7212. Therefore, we find the district court had subject matter jurisdiction over this action.

Maxwell also argues that the district court lacked territorial jurisdiction. " [A]ny offense against the United States begun in one district and completed in another, or committed in more than one district, may be inquired of and prosecuted in any district in which such offense was begun, continued, or completed." 18 U.S.C. § 3237(a). The district court had territorial jurisdiction since a significant portion of the criminal conduct occurred in the Northern District of Alabama. Therefore, we find that the district court did not err in denying Maxwell's motion to quash the indictment.

III. SUMMARY

In this appeal, Maxwell has challenged both his convictions and sentences for violation of the federal tax laws. As we have explained, the district court properly conducted a *Faretta* hearing and determined that Maxwell recognized the consequences of proceeding pro se and did not improperly participate in any plea negotiations; the district court did not err in refusing to allow Maxwell to withdraw his guilty plea, nor did the Government breach the plea agreement; the district court properly applied the Sentencing Guidelines; finally, the district court had subject - matter jurisdiction over the two criminal cases, and res judicata did not bar the government from prosecuting Maxwell. Accordingly, Maxwell convictions and sentences are AFFIRMED.

FILED
97 SEP 5
U.S. DISTRICT COURT
N. D. OF ALABAM

IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ALABAMA

United States of America	§	
	§	
v.	§	
	§	**CR-97-B-0227-S**
Thomas Harold Lake,	§	
Lawrence Stephen Maxwell, Sr.	§	
	§	

MOTION TO QUASH INDICTMENT AND MOTION TO DISMISS FOR WANT OF TERRITORIAL AND SUBJECT MATTER JURISDICTION

COME NOW Lawrence Stephen Maxwell and Thomas Harold Lake *pro se,* with assistance of counsel, accused and named as "Defendants" in the above captioned action, and file this MOTION TO QUASH INDICTMENT AND MOTION TO DISMISS FOR WANT OF TERRITORIAL AND SUBJECT MATTER JURISDICTION, and show the Court as follows:

Lawrence Stephen Maxwell and Thomas Harold Lake, (hereafter "Defendants") were recently served with an "Indictment." For reasons set forth hereinbelow, the charging instrument is fatally defectively and should be QUASHED and the alleged charges against the Defendants should be dismissed for WANT OF TERRITORIAL JURISDICTION AND SUBJECT MATTER JURISDICTION.

SUMMARY OF ARGUMENT

The Defendants, by and through this motion, challenge the territorial jurisdiction and subject matter jurisdiction of the court. The federal courts have consistently held to the principle that **once jurisdiction is challenged the court has no authority to do anything but take action on that motion.** As the Supreme Court held in *The State of Rhode Island v. The*

State of Massachusetts, 37 U.S. 709, once the question of jurisdiction is raised "it must be *considered* and *decided* before the court can move one step further." [Italics added] "Jurisdiction cannot be assumed by a district court nor conferred by agreement of parties, but it is incumbent upon plaintiff to allege in clear terms, the necessary facts showing jurisdiction which must be proved by convincing evidence." *Harris v. American Legion,* 162 F. Supp. 700. [See also *McNutt v. General Motors Acceptance,* 56 S. Ct. 780.]

Defendants unequivocally challenge the territorial jurisdiction of the court over the "places where" the purported activities alleged in the indictment occurred. Defendants also unequivocally challenge the subject matter jurisdiction of the court over Defendants as the "persons" who can be prosecuted for an alleged violation of the Internal Revenue Code Section 7212(a).

Defendants challenge the validity of the Indictment in that it purports a violation of Title 26 of the United States Code. Title 26 has never been enacted as the general and permanent law of the United States. The Internal Revenue Code was enacted as a "separate code" on August 16, 1954, and, pursuant to Public Law 591 83d Congress, can ONLY be cited as the Internal Revenue Code of 1954 or 1986. There is no such law as 26 USC 7212(a). Defendants cannot be indicted for a law that does not exist.

Regulations published by the Secretary of the Treasury as mandated by Congress at IRC § 7805 clearly show that IRC § 7212(a) is only applicable to Bureau of Alcohol, Tobacco and Firearms activities regulated by Title 27 of the Code of Federal Regulations. The IRS' own regulations in the Code of Federal Regulations clearly state that the "Effect of Failure to Publish" regulations mean that no person can be subject to any adverse determination or penalty for failure to comply with a code section when the Secretary fails to publish regulations giving FAIR NOTICE to the public. There are no published regulations applicable to IRC § 7212(a) with respect to Defendants or that would have caused Defendants to have any knowledge that they were subject to prosecution for violations of § 7212(a) of the administrative internal revenue code.

Pro Se

Defendants' "*pro se*" Motion to Dismiss, "however inartfully plead, must be held to a less stringent standard than formal pleadings drafted by bar-admitted attorneys and can only be dismissed for failure to state a claim if it appears 'beyond a doubt that the [Defendants] can prove no set of facts in support of their claims which would entitle them to relief." Haines v. Kerner, 404 U.S., 519-521; Richardson v. Flemming, 651 F 2d at 368 (quoting Estelle v. Gamble, 429 U.S. 97, 97 S.Ct. 285, 50 L.Ed.2d. 251, (1976); Conley v. Gibson, 355 U.S. 41, 78 S. Ct. 99, 2 L.Ed.2d 80 (1957); Alexander v Ware, 714 F.2d 416 (1983); Hayes v Western Weighing and Inspection Bureau, 838 F.2d. 1434 (5th Cir. 1988)). The Defendants' factual allegations in their *pro se* motion must be accepted as true, along with any reasonable inferences that may be drawn therefrom. Ryland v. Shapiro, 708 F.2d. 987 (5th Cir.1983). The Defendants' *pro se* motion must not be read "too narrowly", but must instead be read "liberally" so that any inferences may be drawn therefrom. Bruce v. Wade, 537 F.2d.850 (5th Cir.1976). The Defendants respectfully request that the Court view their motion to dismiss in the most favorable light.

A. LACK OF TERRITORIAL JURISDICTION

The purported activities that are the subject of the indictment are alleged to have occurred within the exterior boundaries of the sovereign states of Alabama and Texas. The indictment fails completely to show that any violative activity occurred "within" the territorial jurisdiction of the Federal United States.

The definition of "STATE" in A Law Dictionary Adapted to the Constitution and Laws of the United States of America and of the Several States of the American Union by John Bouvier, Sixth Edition, Volume 1, clearly demonstrates the known and understood sovereignty of the Several States of the American Union and the Constitutional mandates applicable to and binding on the Several States of the American Union. In the eighth section of the definition of State, Bouvier states, to wit:

> The district of Columbia and the territorial districts of the United States, are not states within the meaning of the Constitution and of the judiciary act, so as to enable a citizen thereof to sue a citizen of one of the states in the federal

courts. 2 Cranch, 445; 1 Wheat 91.

As will be shown hereinbelow, the Founding Fathers, the courts and the laws of the United States government clearly and unmistakably reflect and uphold the territorial jurisdiction of the United States and unmistakably reflect the distinction between the District of Columbia, the Commonwealth of Puerto Rico and the territories and possessions of the United States versus the territories of the 50 States of the American Union. The district courts of the United States have jurisdiction within the territorial jurisdiction of the United States. The district courts of the United States do NOT have jurisdiction for activities occurring outside the territorial jurisdiction of the United States. In the instant case, the United States has moved beyond its territorial jurisdiction to places where the courts should lawfully acknowledge their lack of jurisdiction.

Title 31 of the United States Code, Section 301, states, to wit:

> 31 USC § 301. Department of the Treasury (a) The Department of the Treasury is an executive department of the United States Government **at the seat of government.** [emphasis added]

[See Courtesy copy attached hereto as Addendum 1].

The "seat of government" of the Federal United States Government is the "district" known as the District of Columbia over which Congress has exclusive legislative jurisdiction. Title 4 of the United States Code, Section 72, states, to wit:

> 4 USC § 72. Public offices; at the seat of Government **All offices attached to the seat of government shall be exercised IN THE DISTRICT OF COLUMBIA, AND NOT ELSEWHERE,** except as otherwise expressly provided by law. [emphasis added]
>
> *[See Courtesy copy attached hereto as Addendum 2].*

There is no Act of Congress that expressly provides for the Department of the Treasury to exercise its office outside of the District of Columbia. IRS agents cannot lawfully administrate the internal revenue laws in places where they have no jurisdiction.

The "United States" is defined at 18 USC § 5 in the territorial sense as "the places subject to the jurisdiction of the United States." *[See Courtesy Copy of 18 USC § 5 attached hereto as Addendum 3].* The "United States" is defined by its **territorial boundaries** over which it has jurisdiction just as the States of Texas and Alabama are defined by their territorial boundaries over which the States of Texas and Alabama have jurisdiction. All places over which Texas and Alabama have jurisdiction over are known as Texas and Alabama, respectively. Pursuant to 18 USC §5, all places over which the United States has jurisdiction over are known as the United States. If Texas and Alabama do NOT have jurisdiction over it, the location is NOT Texas or Alabama. If the United States does NOT have jurisdiction over it, the location is NOT within the United States. If the place is NOT within the United States, the United States does NOT have jurisdiction over activities occurring at that location. The concept is simple. The concept is over 220 years old. The concept is the law of the land pursuant to the Texas, Alabama and U. S. Constitutions and the laws of Texas, Alabama and the United States.

> The "Special maritime and territorial jurisdiction of the United States" is defined at 18 USC as follows:
> Sec. 7. Special maritime and territorial jurisdiction of the United States defined. The term "special maritime and territorial jurisdiction of the United States" as used in this title, includes:
> (1) The high seas, any other waters within the admiralty and maritime jurisdiction of the United States and out of the jurisdiction of any particular State, and any vessel belonging in whole or in part to the United States or any citizen thereof, or to any corporation created by or under the laws of the United States, or of any State, Territory, District, or possession thereof, when such vessel is within the admiralty and maritime jurisdiction of the United States and out of the jurisdiction of any particular State.
> (2) Any vessel registered, licensed, or enrolled under the laws of the United States, and being on a voyage upon the waters of any of the Great Lakes, or any of the waters connecting them, or upon the Saint Lawrence River where the same constitutes the International

Boundary Line.

(3) Any lands reserved or acquired for the use of the United States, and under the exclusive or concurrent jurisdiction thereof, or any place purchased or otherwise acquired by the United States by consent of the legislature of the State in which the same shall be, for the erection of a fort, magazine, arsenal, dockyard, or other needful building.

(4) Any island, rock, or key containing deposits guano, which may, at the direct of the President, be considered as appertaining to the United States.

(5) Any aircraft belonging in whole or in part to the United States, or any citizen thereof, or to any corporation created by or under the laws of the United States, or any State, Territory, district, or possession thereof, while such aircraft is in flight over the high seas, or over any other waters within the admiralty and maritime jurisdiction of the United States and out of the jurisdiction of any particular State;

(6) Any vehicle used or designed for flight or navigation in space and on the registry of the United States pursuant to the Treaty on Principles Governing the Activities of States in the Exploration and Use of Outer Space, Including the Moon and Other Celestial Bodies and the Convention on Registration of Objects Launched Outer Space, while that vehicle is in flight, which is from the moment when all external doors are closed on Earth following embarkation until the moment when one such door is opened on Earth for disembarkation or in the case of a forced landing, until the competent authorities take over the responsibility for the vehicle and for persons and property aboard.

(7) Any place outside the jurisdiction of any nation with respect to an offense by or against a national of the United States.

[See Courtesy Copy of 18 USC § 7 attached hereto as Addendum 4].

The Indictment does not allege that Defendants' activities occurred on the "high seas" pursuant to subsection (1), on "any vessel of the United States" pursuant to subsection (2), on "any lands" of the United States pursuant to subsection (3), on "any island, rock or key containing bat guano" pursuant to subsection (4), on "any aircraft" belonging to the

United States pursuant to subsection (5), on "any vehicle designed for flight or navigation in space" pursuant to subsection (6), or "any place outside the jurisdiction against any nation" pursuant to subsection (7). Indeed, the Indictment fails completely to place the alleged activities of Defendants anywhere within the jurisdiction of the United States such that the court can take judicial notice of territorial or subject matter jurisdiction.

The Framers of the Constitution understood federal jurisdiction perfectly. In People v. Godfrey, 17 Johns. 225 (N.Y., 1819), the court held that the federal Fort Niagara was subject to the jurisdiction of the State since the lands had NOT been ceded to the United States. The rationale of its opinion stated:

> To oust this state of its jurisdiction to support and maintain its laws, and to punish crimes, it must be shown that an offense committed within the acknowledged limits of the state, is clearly and exclusively cognizable by the laws and courts of the United States. In the case already cited, Chief Justice Marshall observed, that to bring the offense within the jurisdiction of the courts of the union, it must have been committed **out of the jurisdiction of any state**; it is not (he says,) the offence committed, but the place in which it is committed, which **must be out of the jurisdiction of the state**. 17 Johns., at 233.

Texas and Alabama are "particular States" and any place where the States of Texas and Alabama have jurisdiction the "United States" has NO JURISDICTION. The territorial jurisdiction of the United States, pursuant to 18 USC §7(3) also extends to *"Any lands reserved or acquired for the use of the United States, and under the exclusive or concurrent jurisdiction thereof, or any place purchased or otherwise acquired by the United States by consent of the legislature of the State in which the same shall be, for the erection of a fort, magazine, arsenal, dockyard, or other needful building."* [See U. S. Const. 1.8.17.] This jurisdiction that often occurs "within" the exterior boundaries of one of the "particular" States of the Union of American States, is **obtained by transfer of jurisdiction** pursuant to Article 1 Section 8 Clause 17 of the United States Constitution, and cannot be obtained by any other means.

The "United States" is further defined in the "geographical sense" in the Internal Revenue Code § 3121(e)(1)(2) which states that the "States" of the "United States" include "The District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, and American Samoa." *[See Courtesy Copy of 1988 Edition of 26 USC § 3121 attached hereto as Addendum 5].* **NONE of the 50 "particular" States of the Union of the American States are included in the "United States."** Indeed, when Alaska and Hawaii were "territories" of the United States, they too were defined as "States" of the United States. *[See Courtesy Copy of Edition of Internal Revenue Code of 1939, United States Statutes at Large, Volume 53, Part 1, Section 3797, attached hereto as Addendum 6].* But upon admission to the UNION of the 50 States of the United States of America, Alaska and Hawaii were deleted from the definition of "States" in the Internal Revenue Code. Why were they deleted from the definition of "States" of the United States? Because upon admission to the UNION of the United States **of America**, they were no longer "States" of the federal United States.

Congress is perfectly cognizable that the "States" of the Federal United States do NOT include the States of the UNION of the American States. One need only to look at the American flag and count the **50 Stars** to see that "States" of the United States are NOT included in the United States of America. **The Federal United States and the United States of America are completely separate sovereigns.**

When all five "States" of the "United States" are collectively referred to as being "united" in one entity, they are referred to as the "United States" collectively including the insular possessions of the Federal United States (forts, dockyards and other needful buildings), said insular possessions (federal islands, federal areas, federal enclaves) some of which are geographically located within the exterior boundaries of many of the 50 "particular" independent American States of the Union.

The Federal Rules of Criminal Procedure are, of course, consistent with the constitutional and statutory limitations on federal jurisdiction. The Federal United States District Courts are limited to matters that occur "within" the jurisdiction of the "United States." The Federal Rules of Criminal Procedure, Rule 54 (b)(2) states, to wit:

> These rules apply to proceedings for offenses

> committed on the high seas or to proceedings **OUT OF THE JURISDICTION OF ANY PARTICULAR STATE.** [emphasis added]

The "Application of Terms" of the Federal Rules of Criminal Procedure, Rule 54 (c) clearly and unambiguously shows that Federal jurisdiction is limited to the **exclusive jurisdiction** of the United States, to wit:

> "Act of Congress" — includes any act of Congress locally applicable to and in force in the District of Columbia, in Puerto Rico, in a territory or in an insular possession.
>
> Federal Magistrate Judge, Judge of District Court, Magistrate Judge — judge of the United States . . . **specifically empowered by statute in force in any territory or possession, the Commonwealth of Puerto Rico, or the District of Columbia,** to perform a function which a particular rule relates . . ." [emphasis added]
>
> State — includes District of Columbia, Puerto Rico, territory and insular possession.

[See Courtesy Photocopy of pertinent excerpt of Federal Rules of Criminal Procedure attached hereto as Addendum 7].

Pursuant to Rule 54 of the Federal Rules of Criminal Procedure, Federal U. S. Magistrate Judges are "specifically empowered by statute in force in any territory or possession, the Commonwealth of Puerto Rico, or the District of Columbia, to perform a function which a particular rule relates." The legislative creation of the office and duties of United States Magistrates is set forth in 28 USC §§ 631-639. Pursuant to 28 USC § 636, to wit:

> Each United States magistrate serving under this chapter shall have **within the territorial jurisdiction** prescribed by his appointment - (1) all power and duties conferred or imposed upon United States commissioners by law or by the Rules of Criminal Procedure for the United States District Courts; . . . [emphasis added]

As set forth in Rule 54(b)(2) F. R. Crim. Pro. and 18 USC §

7, the jurisdiction of the district courts exist ONLY for prosecution of offenses occurring "**out of the jurisdiction of a particular state.**" No United States Magistrate has LAWFUL AUTHORITY to arraign Defendants for any alleged offense that occurred outside the exclusive jurisdiction of the United States.

As is easily seen by anyone desiring to acknowledge the truth and law, consistent with the United States Constitution and 220 years of judicial decisions, the Federal Rules of Criminal Procedure declare that the Acts of Congress are NOT applicable to the particular independent State of Alabama. Federal judges have NOT been empowered by the laws of Alabama or Texas or any matter occurring within the exterior boundaries of any "particular" State, but are **ONLY** empowered by statutes in force in the United States possessions, Puerto Rico and District of Columbia. The "States" of the United States do NOT include Alabama because Alabama is NOT a territory or insular possession of the United States.

The Federal Judiciary should be acutely aware that there exists a location "within" the United States versus a location "without" the United States as is so clearly set forth at 28 USC § 1746, to wit:

> Sec. 1746. Unsworn declarations under penalty of perjury. (1) If executed **without** the United States: "I declare under penalty of perjury **under the laws of the United States of America** that the foregoing is true and correct. (2) If executed **within** the United States, its territories, possessions or commonwealths: "I declare under penalty of perjury that the foregoing is true and correct. [emphasis added]

[See Courtesy Copy of 28 USC § 1746 attached hereto as Addendum 8].

28 USC § 1746 clearly demonstrates that the location "without" the United States is "within" and under the jurisdiction and "laws of the United States **OF AMERICA**" as **opposed** to the "laws of the United States." **The laws of these two separate sovereigns are clearly and obviously two completely different sets of laws within two separate jurisdictions.** The "laws of the United States **of America**" are the laws of the several "particular States" such as Texas and

Alabama. When you are in Texas and Alabama, the "laws of the United States of America" are the laws of Texas and Alabama.

It is not possible to be subject to the jurisdiction of the federal United States or one of its administrative agencies without being "within" the United States, meaning "within" a federal area, enclave, possession or territory of the federal United States. For Defendants to be subject to the laws of the United States, they MUST be "within" the United States. To be "within" the United States they MUST be **"out of the jurisdiction of a particular State."**

The Court should take judicial notice that it has no authority over Defendants or over the places "where" the purported activities allegedly occurred. In United States v. Watson, 80 F.Supp. 649 (E.D.Va., 1948), federal criminal charges were dismissed, the court stating as follows:

> **"Without proof of the requisite ownership or possession of the United States, the crime has not been made out,"** 80 F.Supp., at 651.

In United States v. Beason, 495 F.2d 475 (5th Cir., 1974), in finding federal jurisdiction for a robbery committed at Fort Rucker, the court stated:

> **"It is axiomatic that the prosecution must always prove territorial jurisdiction over a crime in order to sustain a conviction therefor,"** 495 F.2d, at 481.

Article I Section 8 Clause 17 of the United States Constitution is a **jurisdictional injunction against Federal encroachment**, to wit:

> The Congress shall have Power...To exercise exclusive Legislation in all Cases whatsoever, over such District (not exceeding ten Miles square) as may, by Cession of Particular States, and the Acceptance of Congress, become the Seat of the Government of the United States, and to exercise like Authority over all Places purchased by the Consent of the Legislature of the State in which the Same shall be, for the Erection of Forts, Magazines, Arsenals, dock-Yards and other needful Buildings; — And To make all Laws which shall be necessary and proper for carrying into

> Execution the foregoing Powers and all other Powers vested by this Constitution in the Government of the United States, or in any Department or Officer thereof.

The 4th circuit and the district courts within the 4th circuit have dealt specifically with the question of territorial jurisdiction on numerous occasions. In United States v. Penn, 48 F. 669 (E.D.Va., 1880), lacking federal jurisdiction over Arlington National Cemetery, a federal larceny prosecution was dismissed. In United States v. Lovely, 319 F.2d 673 (4th Cir., 1963), federal jurisdiction was found to exist by United States ownership of the property and a state cession of jurisdiction.

In Kelly v. United States, 27 F. 616 (D.Me., 1885), federal jurisdiction of a manslaughter committed at Fort Popham was upheld when it was shown that the United States owned the property where the offense occurred and the state had ceded jurisdiction. In United States v. Andem, 158 F. 996 (D.N.J., 1908), federal jurisdiction for a forgery offense was upheld on a showing that the United States owned the property where the offense was committed and the state had ceded jurisdiction of the property to the United States. Some additional cases in which courts of the 4th circuit have consistently upheld the territorial jurisdictional mandate at 1.8.17 U.S. Constitution are: Adams v. Londeree, 139 W. Va. 748, 83 S. E. 2d 127 (1954); Carnegie-Illinois Steel Corp. v. Alderson, 127 W. Va. 807, 34 S.E. 2d 737 (1945), cert. den., 326 U.S. 764; Laing, In re. 127 Fed. 213 (C.C.S.D.W. Va., 1903); Air Terminal Services, Inc. v. Rentzel, 81 F. Supp. 611 (E.D.Va., 1949); Andrews v. Auditor, 69 Va. 115 (1877); Buttery v. Robbins, 177 Va. 368, 14 S.E. 2d 544 (1941); Bank of Phoebus v. Byrum, 110 Va. 708, 67 S.E. 349 (1910); Carnegie-Illinois Steel Corp. v. Alderson, 127 W. Va. 807, 34 S.E. 2d 737 (1945); County of Norfolk v. Portsmouth, 186 Va. 1032, 45 S.E. 2d, 136 (1947); County of Prince William v. Thomason Park, 197 Va. 861, 91 S.E. 2d 441 (1956); Crook, Homer & Co. v. Old Point Comfort Hotel Co., 54 Fed. 604 (C.C.E.D. Va., 1893); Crowder v. Virginia, 197 Va. 96, 87 S.E. 2d 745 (1955), app. dism., 350 U.S. 957; Edelstein v. South Post Officers Club , 118 F. Supp. 40 (E.D.Va., 1951); Foley v. Shriver, 81 Va. 568; Hall v. Commonwealth, 129 Va. 738, 105 S.E. 551 (1921); Hercules Powder Co. v. Ruben, 188 Va. 694, 51 S.E. 2d 149 (1949); Lima v. Lawler, 63 F. Supp. 446

(E.D.Va., 1945); McLaughlin v. Bank of Potomac, 48 Va. 68 (1850); Nash v. Air Terminal Services, Inc. 85 F. Supp. 545 (E.D.Va., 1949); Nikis v. Commonwealth, 144 Va. 618, 131 S.E. 236 (1926); Norfolk & P.B.L.R. v. Parker, 152 Va. 484, 147 S.E. 461 (1926); Randolph v. Commonwealth, 145 Va. 883, 134 S. E. 544 (1926); Sollitt & Sons Const. Comp. v. Commonwealth, 161 Va. 854, 172 S. E. 290 (1934), app. dism., 292 U. S. 599; Tatem, Ex parte, 23 Fed. Cas. 708, No. 13,759 (E. D. Va., 1877); United States v. Crary, 1F. Supp. 406 (W. D. Va., 1932); United States v. McIntosh, 57 F 2d 573, 2 F. Supp. 244 (E.D. Va., 1932); United States v. Penn., 48 Fed. 669 (C. C. E. D. Va., 1880); United States v. Prince William County, 9 F. Supp. 219 (E. D. Va., 1934), aff'd., 79 F.2d 1007 (C. A. 4, 1935), cert. den., 297 U.S. 714; United States v. Watson, 80 F. Supp. 649 (E. D. Va., 1948); United States v. William R. Trigg Co., 115 Va. 272, 78 S. W. 542 (1912); Victor Valley Housing Corp. v. County of San Bernardino, 45 Cal.2d 580, 290 P.2d 565 (1955); Virginia v. Stiff, 144 F. Supp. 169 (W. D. Va., 1956); Waltrip v. Commonwealth, 189 Va. 365, 53 S.E.2d 14 (1949); Western Union Tel. Co. v. Richmond, 67 Va. 1 (1875); Woodfin v. Phoebus, 30 Fed. 289 (C. C. E. D. Va., 1887).

The Fifth Circuit Court of Appeals has consistently and redundantly upheld the pure constitutional basis for jurisdiction of the Federal United States. In United States v. Townsend, 474 F.2d 209 (1973), a criminal conviction was **REVERSED** by the Fifth Circuit upon a determination that there was no evidence that the alleged crime occurred "within the jurisdiction of the United States." The Fifth Circuit, consistent with its own rulings on the jurisdictional question, and consistent with the rulings of the United States Supreme Court and the other Circuit Courts, set forth the standard of determining federal jurisdiction pursuant to Article I Section 8 Clause 17 of the United States Constitution. The Fifth Circuit made it quite clear that, **"It [jurisdiction] comes down, not to a question of law as such, but to a question of geography."** Id. at 214. *[See Courtesy Copy of United States v. Townsend 474 F.2d 209 (1973) attached hereto as Addendum 9].*

The Fifth Circuit has historically demonstrated its clear understanding of the principles of limited federal jurisdiction by examining closely the constitutional requirements of 1) particular State cession, 2) acceptance by the National Congress, 3) purchase by the United States, and

4) possession for the purpose of government. In Brown v. United States, 257 F. 46 (Fifth Cir. 1919), the Fifth Circuit set forth the standard for indictments and informations of "offenses" within federal jurisdiction. The Fifth Circuit found that a federal judge could take judicial notice that the district had jurisdiction over the crime when it is made clear that the "place where" the offense was committed was "**outside a particular State**" and "within the jurisdiction of the United States." "Where an indictment in a federal court sufficiently described the place where the offense was committed, the court will take judicial notice of facts that vest the United States with exclusive jurisdiction to a federal court." Id. at 46. For the district court to have **EXCLUSIVE jurisdiction**, the place where the offense was committed **MUST** be "out of the jurisdiction of a particular state." *[See Courtesy Copy of Brown v. United States, 257 F. 46 (Circuit Court of Appeal, Fifth Circuit. February 12, 1919) attached hereto as Addendum 10].*

In Adams et al. v. United States, 319 U.S. 312 (5th Cir. 1943), the Supreme Court of the United States upholding the Fifth Circuit Court of Appeals further demonstrated its clear understanding of the **territorial jurisdiction** of the United States by finding that the District Court had NO JURISDICTION to try a rape case pursuant to 18 USC § 457 because the "place where" the rape occurred, though it was a military reservation, was not accepted by Congress as one of the elements of Article 1, Section 8, Clause 17 of the United States Constitution, an element absolutely essential to comply with the **constitutional mandate for transfer of jurisdiction** to the federal government by the "particular" independent State. *[See Courtesy Copy of Adams et al. v. United States, 319 U.S. 312 (5th Cir. May, 24, 1943) attached hereto as Addendum 11].*

In United States v. Benson 495 F.2d 475 (5th Cir. 1974), the Fifth Circuit Court of Appeals held that, "**It is axiomatic that the prosecution must always prove territorial jurisdiction over a crime in order to sustain a conviction therefor.**" Id. at 481. In the instant case, Respondent United States cannot prove territorial jurisdiction over any "crime" that the United States is allegedly gathering evidence to prosecute Petitioner, therefore, it could NEVER sustain a conviction of Petitioner. If the Fifth Circuit Court of Appeals required that the United States meet this burden of proof to prosecute Benson, is the same Fifth Circuit Court of Appeals going to require that the United States meet the same burden to prosecute Petitioner? Petitioner living in Texas in 1997 is constitutionally guaranteed the same standard of review under equal protection of the law as was required for Alabama citizen Fletcher Benson in 1974. *[See Courtesy Copy of United States v. Benson 495 F.2d 475 (5th Cir. 1974)attached hereto as Addendum 12].*

In United States v. Hudspeth, 223 F.2d 848 (5th Cir. 1955), the Fifth Circuit Court of Appeals, citing Brown v. United States, 5th Cir., 257 F.2d 46, again held that "the place where the offense was committed was sufficiently described" so that the court could take judicial notice of the facts that vest jurisdiction in the United States." In Gainey v. United States, 324 F.2d 731 (5th Cir. 1963), the 5th Circuit Court of Appeals found that the district court in Georgia had jurisdiction to prosecute a murder that occurred at a United States Penitentiary in Fulton County Georgia, by finding, "As the offense was committed on lands purchased by the United States by the consent of the legislature of the State of Georgia, and the United States Penitentiary in Fulton County Georgia was a "needful building" within the meaning of U. S. Constitution Article I, § 8, cl. 17, the United States had legislative jurisdiction over those lands." Id. at 732. *[See Courtesy Copies of United States v. Hudspeth, 223 F.2d 848 (5th Cir. 1955) and Gainey v. United States, 324 F.2d 731 (5th Cir. 1963)attached hereto as Addendums 13 and 14, respectively].*

In June 1957, the federal government of the United States published a work entitled Jurisdiction Over Federal Areas Within The States: Report of the Interdepartmental Committee for the Study of Jurisdiction Over Federal Areas Within the States. Part II of the Study, entitled A Text of Law of Legislative Jurisdiction, was completed by the **48 Attorneys General** of the particular states, to wit:

> **The Federal Government cannot, by unilateral action on its part, acquire legislative jurisdiction over any area within the exterior boundaries of a State.** Article I, section 8, clause 17 of the Constitution, provides that legislative jurisdiction may be transferred pursuant to its terms ONLY with the consent of the legislature of the State in

> which is located the area subject to the jurisdictional transfer. As was indicated in Chapter II, **the consent requirement of article I, section 8, clause 17, was intended by the framers of the Constitution to preserve the State's jurisdictional integrity against Federal encroachment.**

Id., at 46. [emphasis added].

> **The Constitution gives express recognition to but one means of Federal acquisition of legislative jurisdiction -- by State consent under Article I, section 8, clause 17** .... Justice McLean suggested that the Constitution provided the sole mode for transfer of jurisdiction, and that if this mode is not pursued, no transfer of jurisdiction can take place.

Id., at 41.

> "It scarcely needs to be said that unless there has been a transfer of jurisdiction (1) pursuant to clause 17 by a Federal acquisition of land with State consent, or (2) by cession from the State to the Federal Government, or unless the Federal Government has reserved jurisdiction upon the admission of the State, **the Federal Government possesses NO legislative jurisdiction over any area within a State**, such jurisdiction being for exercise by the State.

Id., at 45. *[See pertinent portions of Jurisdiction Over Federal Areas Within The States: Report of the Interdepartmental Committee for the Study of Jurisdiction Over Federal Areas Within the States. Part II of the Study, entitled A Text of Law of Legislative Jurisdiction, attached hereto as Addendum 15].*

This Text of Law, the **LEGAL OPINION** of 48 Attorneys General of the particular State republics in 1957[8], as cited hereinabove, referenced hundreds of controlling court cases, including many decisions of The United States Supreme Court and Fifth Circuit Court of Appeals, in defining the special territorial jurisdiction of the United States and the retention of the particular States to jurisdiction over criminal and civil matters within the exterior boundaries of the particular States. Thus, from an abundance of judicial opinion, buttressed by the definitive government treatise researched and compiled pursuant to Presidential Order of Dwight Eisenhower, the "jurisdiction of the United States" is carefully circumscribed and defined as a very precise portion of America, that portion being the District of Columbia and the federal enclaves purchased and possessed by the Federal United States.

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[8] This Text of Law of Legislative Jurisdiction was compiled and published

The application of this principal is clearly stated in Caha v. United States, the U.S. Supreme Court finding as follows:

> **The laws of Congress do not extend into the territorial limits of the states, but have force ONLY in the District of Columbia, and other places that are WITHIN the EXCLUSIVE jurisdiction of the national government.** 152 U.S. 211, 215, 14 S.Ct. 513 (1894) [emphasis added]

In United States v. Bevans, 16 U.S. (3 Wheat.) 336 (1818), one of the earliest questions of federal jurisdiction which involved a federal prosecution for a murder committed on board the Warship, Independence, anchored in the harbor of Boston, Massachusetts, the defense complained that only the state had jurisdiction to prosecute, and argued that the federal Circuit Courts had no jurisdiction of this crime supposedly committed within the federal government's

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forty-four years after the ratification of the 16th Amendment, eighteen years after Congress enacted the Internal Revenue Code of 1939 and three (3) years after the enactment of The Internal Revenue Code of 1954. It is incredible to note that in the meticulously detailed 351 pages of this legal opinion on legislative jurisdiction, that covered **ALL areas of federal jurisdiction INCLUDING taxation**, it is made abundantly clear that the States retained ALL authority to tax, and, the **ONLY income tax** was a state income tax that Congress retroceded authority to the States, via The Buck Act, to impose and collect on incomes of federal employees working in a federal area. There is no hint of a federal income tax on incomes of individual.

admiralty jurisdiction. In argument before the Supreme Court, counsel for the United States admitted as follows:

> The exclusive jurisdiction which the United States has in forts and dockyards ceded to them, is derived from the express assent of the states by whom the cessions are made. It could be derived in no other manner; because without it, the authority of the state would be supreme and exclusive therein. 3 Wheat., at 350, 351.

That in holding that the State of Massachusetts had jurisdiction over the crime, the U. S. Supreme Court held:

> What, then, is the extent of jurisdiction which a state possesses?
>
> We answer, without hesitation, the jurisdiction of a state is co-extensive with its territory; co-extensive with its legislative power. 3 Wheat., at 386, 387
>
> The article which describes the judicial power of the United States is not intended for the cession of territory or of general jurisdiction.... Congress has power to exercise exclusive jurisdiction over this district, and over all places purchased by the consent of the legislature of the state in which the same shall be, for the erection of forts, magazines, arsenals, dock-yards, and other needful buildings.
>
> It is observable that the power of exclusive legislation (which is jurisdiction) is united with cession of territory, which is to be the free act of the states. It is difficult to compare the two sections together, without feeling a conviction, not to be strengthened by any commentary on them, that, in describing the judicial power, the framers of our constitution had not in view any cession of territory; or, which is essentially the same, of general jurisdiction. 3 Wheat., at 388.

In Commonwealth v. Young, Brightly, N.P. 302 (Pa., 1818), the Supreme Court of Pennsylvania was presented with the issue of whether lands owned by the United States for which Pennsylvania had never ceded jurisdiction had to be sold pursuant to state law. In deciding that the state law of Pennsylvania exclusively controlled this sale of federal land, the Court held:

> The legislation and authority of congress is confined to cessions by particular states for the seat of government, and purchases made by consent of the legislature of the state, for the purpose of erecting forts. **The legislative power and exclusive jurisdiction remained in the several states, of all territory within their limits, not ceded to, or purchased by, congress, with the assent of the state legislature, to prevent the collision of legislation and authority between the United States and the several states.** Id., at 309. [emphasis added]

In New Orleans v. United States, 35 U.S. (10 Pet.) 662 (1836), the United States claimed title to property in New Orleans likewise claimed by the city. After holding that title to the subject lands was owned by the city, the U. S. Supreme Court addressed the question of federal jurisdiction and stated:

> Special provision is made in the Constitution for the cession of jurisdiction from the states over places where the federal government shall establish forts or other military works. And it is ONLY in these places, or in the territories of the United States, where it can exercise a general jurisdiction. 10 Pet., at 737. [emphasis added]

In New York v. Miln, 36 U.S. (11 Pet.) 102 (1837), the question before the U.S. Supreme Court involved the attempt by the City of New York to assess penalties against the master of a ship for his failure to make a report as to the persons his ship brought to New York. As against the master's contention that the act was unconstitutional and that New York had jurisdiction in the matter, the U.S Supreme Court held:

> If we look at the place of its operation, we find it to be within the territory, and, therefore, within the jurisdiction of New York. If we look at the person on whom it operates, he is found within the same territory and jurisdiction. 36 U.S., at 133.

> A State has the same undeniable and unlimited jurisdiction over all persons and things within its territorial limits, **as any foreign nation**, where that jurisdiction is not surrendered or restrained by the Constitution of the United States. That, by virtue of this, it is not only the right, but the burden and solemn duty of a State, to advance the safety, happiness and prosperity of its people, and to provide for its general welfare, by any and every act of legislation which it may deem to be conducive to these ends; where the power over the particular subject, or the manner of its exercise is not surrendered or restrained, in the manner just stated. That all those powers which relate to merely municipal legislation, or what may, perhaps, more properly be called internal police, are not thus surrendered or restrained; and that, consequently, in relation to these, **the authority of a State is complete, unqualified and exclusive**. 36 U.S., at 139.

In Pollard v. Hagan, 44 U.S. (3 How.) 212 (1845), the question of federal jurisdiction was once again before the Court. This case involved a contest of the title to real property, with one of the parties claiming a right to the disputed property via a United States patent; the lands in question were situated in Mobile, Alabama state, adjacent to Mobile Bay. In discussing the subject of federal jurisdiction, the U. S. Supreme Court held:

> **We think a proper examination of this subject will show that the UNITED STATES NEVER HELD ANY MUNICIPAL SOVEREIGNTY, JURISDICTION, or right of soil in and to the territory, of which Alabama or any of the new states were formed,** 44 U.S., at 221.
>
> **[B]ecause, the United States has no constitutional capacity to exercise municipal jurisdiction, sovereignty, or eminent domain, within the limits of a State or elsewhere, except in the cases in which it is expressly granted,** 44 U.S., at 223.

> **Alabama state is therefore entitled to the sovereignty and jurisdiction over all the territory within her limits, subject to the common law, 44 U.S., at 228, 229**

In Fort Leavenworth R. Co. v. Lowe, 114 U.S. 525, 5 S.Ct. 995 (1885), the railroad company property that passed through the Fort Leavenworth federal enclave was being subjected to taxation by Kansas, and the company claimed an exemption from state taxation. In holding that the railroad company's property could be taxed, the U.S Supreme Court carefully explained federal jurisdiction within the states:

> The consent of the states to the purchase of lands within them for the special purposes named, is, however, essential, under the constitution, to the transfer to the general government, with the title, of political jurisdiction and dominion. Where lands are acquired without such consent, **the possession of the United States, unless political jurisdiction be ceded to them in some other way, is simply that of an ordinary proprietor.** The property in that case, unless used as a means to carry out the purposes of the government, is subject to the legislative authority and control of the states equally with the property of private individuals," 114 U.S., at 531. [emphasis added]

In Curry v. State, 12 S.W. (2d), 1928, the **Texas Court of Criminal Appeals** (the bifurcate Supreme Court of Texas with regard to criminal matters) upheld a conviction of Ronald Curry who was tried and "convicted of the offense of unlawfully seining within certain prohibited waters," said waters being off the coast of Texas near Port Aransas, a United States military reservation. Defendant Curry claimed that Texas has no jurisdiction due to the fact that the waters were within a military reservation of the United States. However the Texas Court of Criminal Appeals found that the Texas legislature had NOT ceded the land to the United States therefore no transfer of jurisdiction had occurred. Further, the court addressed the "political question" of "sovereignty" between the United States and Texas — **two separate sovereigns**. The decision of the Texas Court of

Criminal Appeals stands today as the defining law of Texas, to wit:

> All courts of justice are bound to take judicial notice of the **territorial extent of the jurisdiction exercised by the government whose laws they administer, of its recognition or denial of the SOVEREIGNTY OF A FOREIGN POWER,** as appearing from the public acts and legislature and executive, all those acts are not formally put into evidence, nor in accord with the pleadings. Id. at 798.
>
> The statement of facts shows a transfer of the legal title to the United States government, but goes no further. Id. at 798.
>
> The proper solution of this interesting and important question turns upon a construction of articles 361 to 376, both inclusive, R. S. of 1895, relating to "Cession of Lands to United States. " Article 361 reads as follows: The United States may purchase, acquire, hold, own, occupy and possess such lands within the limits of this state as they shall deem expedient and may seek to occupy and hold as sites on which to erect and maintain lighthouses, forts, military stations, magazines, arsenals, dockyards, custom houses, post offices and all other needful public buildings **within the purview of the eighteenth clause of the eighth section of the first article of the Constitution of the United States**; and the consent of the legislature of the state of Texas is hereby expressly given to any such purchase or acquisition made in accordance with the provisions of this title. Id. at 797.
>
> Our reasoning in this regard is supported by the Circuit Court of Appeals, Fifth Circuit, in the case of Brown v. United States, 257 F. 46, in which said articles of the Texas statute received consideration and discussion. Id. at 799.
>
> Since we are of the opinion that **only one method of transferring exclusive jurisdiction to the United States government over land purchased and used by it under**

> **the clause of the Federal Constitution** already mentioned has been provided by our laws, and such method not having been followed with regard to the land under consideration, **THE JURISDICTION OF OUR STATE COURTS OVER SUCH REMAINS**, and this judgment must be affirmed, and it is accordingly so ordered. Id. at 799. [emphasis added]

[See Courtesy Copy of Curry v. State, 12 S.W. (2d), 1928 attached hereto as Addendum 16].

Any honest reading of Curry v. State, 12 S.W. (2d), 1928 must raise the easily answered fundamental question of whether Texas is "OF" the "United States." The word "of" means "belonging to" or "possessed by." Does Texas belong to the "United States"? Is Texas possessed by the "United States"? If the "United States" owned Texas and possessed Texas, Texas would be "of" the United States and would be, in essence, simply a part of the United States. So why would Texas "cede land" to itself? Why would the Texas legislature "cede jurisdiction" to itself? Why would the National Congress need to "accept" cession of land and jurisdiction from itself? Why would Texas accept payment from itself and why would the United States make payment to itself? Obviously, any claim that Texas is part of the United States would be patently absurd. Texas is NOT "of" the United States and the United States does NOT own or possess Texas. They are completely **separate sovereigns**. And there is ONLY one way that the foreign sovereign — the United States — can acquire jurisdiction over a PLACE in Texas — U. S. Constitution 1.8.17. And once the jurisdiction is acquired, jurisdiction ONLY exists at THAT PLACE — commonly called a federal area or federal enclave.

The Attorneys General of the 48 particular states of the Union in 1957 addressed the issue of **separate sovereigns** when the Federal government acquires land and jurisdiction within the territorial boundaries of a particular state, to wit:

> Rule of International Law: *Extended by courts to provide civil law.* — The vacuum which would exist because of the absence of State law or Federal legislation with respect to civil matters in areas under Federal exclusive legislative jurisdiction has been partially filled by the courts, through extension to these areas of **a rule of**

> **international law that when one sovereign takes over territory of another the laws of the original sovereign in effect at the time of the taking which are not inconsistent with the laws or policies of the second continue in effect, as laws of the succeeding sovereign, until changed by that sovereign.** Pgs. 156-158 [emphasis added]
>
> *[See pertinent portions of Jurisdiction Over Federal Areas Within The States: Report of the Interdepartmental Committee for the Study of Jurisdiction Over Federal Areas Within the States. Part II of the Study, entitled A Text of Law of Legislative Jurisdiction, attached hereto as Addendum 15].*

Defendants contend that the issue of territorial and legislative jurisdiction of the Federal Government over the geographical area, in which the purportedly prohibited activities of Defendants are alleged to have occurred, must be unequivocally[9] established before the Court can proceed.

B. INDICTMENT FAILS TO PROVIDE SUFFICIENT NOTICE OF LOCATION OF OFFENSE

The federal courts have historically demonstrated their clear understanding of the principles of limited federal jurisdiction by examining closely the constitutional requirements of 1) cession of land by a particular State, 2) acceptance of the cession by the National Congress, 3) purchase of the land by the United States, and 4) possession of the land for the purpose of government. In Brown v. United States, 257 F. 46 (Fifth Cir. 1919), the Fifth Circuit set forth the standard for indictments and informations of "offenses" within federal jurisdiction. The Fifth Circuit found that a federal judge could take judicial notice that the district had jurisdiction over the crime when it is made clear that the "place where" the offense was committed was "**outside a particular State**" and "within the jurisdiction of the United States." "Where an indictment in a federal court sufficiently described the place where the offense was committed, the court will take judicial notice of facts that vest the United States with exclusive jurisdiction to a federal court." Id. at 46. For the district court to have **EXCLUSIVE jurisdiction**, the place where the offense was committed **MUST** be "out of the jurisdiction of a particular state." To Fifth Circuit's opinion held, to wit:

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[9] "Unequivocal" defined - Clear; plain; capable of being understood in only one way, or as clearly demonstrated. Free from uncertainty, or without doubt; and when used in reference to burden of proof, it implies proof of the highest possible character and it imports proof of the nature mathematical certainty. *Black's Law Dictionary Sixth Ed.*

> The second question insisted upon by Plaintiff in error, relates to the sufficiency of the indictment on which the defendant was tried, and under which he was convicted. It is questioned for failing to sufficiently describe the **locality where** the alleged murder was committed **to give a federal court jurisdiction.** Jurisdiction in the federal court was claimed by the government under the following part of the third subdivision of section 272, chapter 11, of the Penal Code (Act March 4, 1909, c. 321, 35 Stat. 1142 [Comp. St. § 10445]):
>
> > "Or any place purchased or otherwise acquired by the United States by consent of the legislature of the State in which the same shall be, for erection of a fort, magazine, arsenal, dockyard, or other needful building."
>
> The indictment alleged that the United States acquired in Beeville, Bee county, Tex., a parcel of land for the public purpose of the United States, described by metes and bounds; that, prior to the date of the commission of the offense, **constitutional and exclusive jurisdiction over the site of said parcel of land** was ceded to the United States by the State of Texas in the manner provided by law; and that, from the date of cession until the time of the finding of the indictment, the said **parcel of land was under the exclusive jurisdiction of the United States**, and was so on May 7, 1917, when the offense was there committed.

[See Courtesy Copy of Brown v. United States, 257 F. 46 (Circuit Court of Appeal, Fifth Circuit. February 12, 1919) attached hereto as Addendum 10].

Of course, it is clearly apparent that for the United States to have **exclusive jurisdiction**, the States of Alabama or Texas would have **no jurisdiction**. Therefore, for the United States to have territorial jurisdiction the offense MUST have been committed "**out of the jurisdiction of the particular state.**"

The defective indictment fails completely to even allege a "locality where" the alleged offense was committed much less include "metes and bounds," declare the "parcel of land was ceded for public purpose of government" or that it was "ceded in the manner prescribed by law" to give the federal government jurisdiction over the "parcel of land." Most importantly, it fails to allege that the United States has **exclusive jurisdiction** over the "locality where" the alleged offenses were committed.

Failing to provide "sufficient notice" of the "locality where" the alleged offenses occurred, the indictment is fatally defective and should be QUASHED.

C. UNITED STATES CANNOT PROSECUTE 18 USC OFFENSES OUTSIDE THE JURISDICTION OF THE FEDERAL UNITED STATES

In Adams et al. v. United States, 319 U.S. 312 (5th Cir. 1943), the Fifth Circuit Court of Appeals further demonstrated its clear understanding of the **territorial jurisdiction** of the United States by finding that the District Court had NO JURISDICTION to try a rape case pursuant to 18 USC § 457 because the "place where" the rape occurred, though it was a military reservation, was not accepted by Congress as one of the elements of Article 1, Section 8, Clause 17 of the United States Constitution, an element absolutely essential to comply with the **constitutional mandate for transfer of jurisdiction** to the federal government by the "particular" independent State.

The United States has no more jurisdiction to prosecute Defendants for an alleged violation of 18 USC §371 than it had to try Adams for rape pursuant to 18 USC § 457. The same jurisdictional restrictions exist in 1997 as existed in 1943. The constitutional injunction against federal encroachment has not changed. The charge of violating 18 USC § 371 should be DISMISSED FOR WANT OF TERRITORIAL JURISDICTION.

D. 26 USC IS NOT A LAW OF THE FEDERAL UNITED STATES

The defective indictment alleges violations of 26 USC § 7212(a). *[See Courtesy Copy of 26 USC § 7212(a) attached hereto as Addendum 17].* Such an allegation is fatally defective in that Title 26 has never been enacted into positive law and, therefore CANNOT be cited as 26 USC. *[See Courtesy Copy of 1 USC § 204 attached hereto as Addendum 18].* On August 16, 1954, the "code sections" of Title 26 were enacted as a "separate code." The 83rd Congress made it patently clear in Section 1 of Public Law 591 that the law passed to enact the administrative internal revenue laws can ONLY be cited as the INTERNAL REVENUE CODE OF 1954 (IRC).

Pursuant to 1 USC § 204, a proper and lawful citation with regard to the alleged violation of the Internal Revenue Code can ONLY be IRC 7212(a). The citation on the Indictment does not exist as a general or permanent law enacted by the Congress of the United States. Therefore, there is no allegation of a violation of law with regard to §7212(a) before the court, and, therefore, no controversy before the Court. Counts 1-7 should be quashed for want of jurisdiction because no controversy can exist in absence of the violation of a law.

Additionally, pursuant to Internal Revenue Code § 7851 Applicability of Revenue Code, "the provisions of Subtitle F take effect the day after the **TITLE** is enacted into law." *[See Courtesy Copy of § 7851 attached hereto as Addendum 19].* § 7212(a) is a "provision of Subtitle F" and has NEVER "taken effect" because the "TITLE" has NEVER been enacted into law. Notwithstanding the lack of territorial jurisdiction, a LAW does NOT exist until it is enacted by Congress. Defendants CANNOT be charged with violating a law that does not exist. The indictment cannot cite a violation of 26 USC because 26 USC is NOT law and it is impossible to violate a law the doesn't exist.

Further, "Where title has not been enacted into positive law, title is only prima facie or rebuttal evidence of law, and if construction is necessary, recourse may be had to original statutes themselves." United States v. Zuger, 474 U.S. 805. IRC § 7212(a) as part of a "separate code" that provides guidelines for a Federal Administrative Agency was DERIVED from an Act of Congress that ONLY intended to prosecute a "person" who is the **officer or employee of a corporation or a member or employee of a partnership who duty it is, as such officer or employee, to file the returns and pay the tax for the federal corporation.** The definition of "person" is clearly set forth at IRC § 7343 as the "person" referred to in Chapter 75 Crimes and Forfeitures. *Courtesy*

Copy of § 7343 attached hereto as Addendum 20]. The same "person" who is referenced as the "person" who willfully attempts to defeat or evade a tax pursuant to § 7201 is defined as the same person who "corruptly endeavors to impede the due administration of the internal revenue laws" pursuant to § 7212(a). Each of these "persons" MUST have one thing in common — they both MUST be under a DUTY to perform an act that places them in the sights of the officers of the IRS who are charged with the responsibility to duly administrate the internal revenue laws. Defendants are NOT "persons" as is clearly defined and applicable to code sections of Chapter 75. Indeed, the Indictment fails completely to allege that Defendants are persons as clearly defined at § 7343, nor does it allege that Defendants are officers, members or employees of a corporation or partnership bound by a duty from which the alleged violation occurred. As such, the Indictment is absent an essential element required to bring a prosecution for alleged violations of § 7212(a), and should be QUASHED.

Defendants cannot be prosecuted for violating laws that do not exist, and cannot be prosecuted as "persons" who are officers or employees of a federal corporation whose duty it is to file a return or pay a tax as intended by the Act of Congress from which § 7212(a) was DERIVED. The defective indictment should be QUASHED for charging a violation of law that does not exist and for failing to allege that Defendants are "officers or employees of a federal corporation whose duty it is to file a return and pay a tax" pursuant to the administrative tax code of the Federal United States as **intended** by Congress.

E. EFFECT OF FAILURE TO PUBLISH REGULATIONS

Notwithstanding the total lack of territorial jurisdiction, no one (not even federal citizens living in federal areas) can be required to comply with any form or "rule" that is not published in the federal register. Pursuant to the Administrative Procedures Act codified at 5 USC §§ 552 et. seq. and the Federal Register Act codified at 44 USC §§ 1501 et seq., anything having general applicability and effect, **particularly if it prescribes a penalty**, must be published in the Federal Register. Also, the IRS's own internal regulation on the subject published in the Federal Register by the Secretary of the Treasury is 26 CFR 601.702 which states:

> **Effect of Failure to Publish**. Except to the extent that a person has actual and timely notice of the terms of any manner referred to in subparagraph (1) of this paragraph **which is required to be published in the Federal Register, such person is not required in any manner to resort to, or be adversely affected by, such matter if it is not so published or is not incorporated by reference therein** pursuant to subdivision (1) of this subparagraph. Thus, for example, any such matter which imposes an obligation and which is not so published or incorporated by reference will not adversely change or effect a person's rights."

The Federal Courts have consistently upheld the requirement to publish in the Federal Register. In U.S. v. Reinis 794 F. 2d 506 (9th Cir. 1986) the Ninth Circuit Court of Appeals reversed a district court conviction for failure of the defendant to complete a "currency transaction reporting form" (IRS Form 4789) on the finding that there was no requirement to complete the form " where the form was never promulgated pursuant to the rulemaking requirements of the Administrative Procedure Act. 5 U.S.C.A. § 553" Id. at 506-507.

And just two years earlier in U.S. v. $200,000, 590 F. Supp. 866 (1984) a Federal District Court properly ordered the return of $200,000.00 to the Defendant on finding, to wit:

> [The] Currency Reporting form (IRS Form 4790) claimant failed to fill out, was void and invalid. The Currency Reporting Form as a 'rule' under Administrative Procedures Act, should have been published in Federal Register and should have been subject to APA notice and comment procedures, and since Form was not constructively published sufficiently to satisfy APA procedural requirements, Form was a nullity with respect to Claimant . . . and the Form is invalid unless and until it is properly published in the Federal Register pursuant to APA requirements. For agency requirement to be considered a valid 'rule,' three conditions must be satisfied: 'rule' must be within agency's granted power, it must be issued pursuant to proper administrative procedures and it must be

> reasonable as a matter of due process. 5 U.S.C.A. 551; U.S.C.A. Const. Amend. 5."

Id. at 868-869. In United States v. Mersky , 361 U.S. 431, 437-438 the United States Supreme Court rules that: "The result is that neither the statute nor the regulations are complete without the other, and only together do they have any force. In effect, therefore, the construction of one necessarily involves the construction of the other." *And* in California Banker's v. Shultz, 416 U.S. 21, 26, the United States Supreme Court stated, "We think it is important to note that the Act's civil and criminal penalties attach only upon violation of the regulations promulgated by the Secretary [of the Treasury]; if the Secretary were to do nothing, the Act itself would impose no penalties on anyone."

These standing decisions of a federal district court, the Ninth Circuit Court of Appeals and The United States Supreme Court (twice) uphold the lawful mandate that administrative agencies MUST publish their regulations in the federal register for the rule of law to have force or effect on anyone.

The Secretary has published regulations for § 7212(a). These regulations provide the general public with the "who, what, when, where, why, how and how many" that show how the code section is to be applied. As mandated by IRS § 7805, the Secretary of the Treasury of the Department of the Treasury has published regulations applicable to § 7212(a) *under* 27 Part 170 Miscellaneous Regulations Pertaining to Liquor § 170.79 Authority of ATF officers to enter premises to examine articles and objects subject to liquor tax; *under* 27 Part 270 Manufacture of Tobacco Products § 270.43; *under* 27 Part 275 Importation of Tobacco Products and Cigarette Papers and Tubes § 275.24; *under* 27 Part 285 Manufacture of Cigarette Papers and Tubes § 285.33; *under* 27 Part 290 Exportation of Tobacco Products and Cigarette Papers and Tubes, without payment of tax or with drawback of tax § 290.71; *under* 27 Part 295 Removal of Tobacco Products and Cigarette Papers and Tubes, without payment of tax for use of the United States § 295.24; and *under* 27 Part 296 Miscellaneous Regulations Relating to Tobacco Products and Cigarette Papers and Tubes § 296.165.

These are the ONLY regulations published by the

Secretary in the Code of Federal Regulations showing that "interference with the due administration of the internal laws" subjects the person who interferes to prosecution under the authority of IRC § 7212(a). In each and every instance the "person" who would be subject to the prosecution is the corporate officer or employee who duty it as such corporate officer or employee to perform the duty from which the violation (interference or non-cooperation) occurs. [See Definition of "person" subject to prosecution under Chapter 75 at IRC §7343]. The regulations are "inextricably intertwined" [See Merskey v. United States *supra*] such that the construction of one is necessarily the reconstruction of the other and neither has force or effect of law without the other.

The Indictment fails completely to allege that either Defendant was involved in any way with any activity, trade or business under the authority of the Department of the Treasury from which any violation of § 7212(a) could have possibly occurred. Absent the publication of any other regulation in the Code of Federal Regulations, Defendants could not possibly have been given FAIR NOTICE of any possible offense of § 7212(a), therefore prosecution without fair notice of the law is in violation the Administrative Procedures Act [5 USC 553] and the Federal Register Act [44 USC 1501]. The Indictment failing to allege any violation of these applicable regulations or to associate Defendants with activities prohibited by these regulations is VOID on its face and should be QUASHED.

CONCLUSION

As the Supreme Court held in *The State of Rhode Island v. The State of Massachusetts*, 37 U.S. 709, once the question of jurisdiction is raised "it must be *considered* and *decided* **before the court can move one step further.**" [Italics added] "Jurisdiction cannot be assumed by a District Court nor conferred by agreement of parties, but it is incumbent upon plaintiff to allege in clear terms, the necessary facts showing jurisdiction which must be proved by convincing evidence." *Harris v. American Legion*, 162 F. Supp. 700. [See also *McNutt v. General Motors Acceptance*, 56 S. Ct. 780.] Until such proof of jurisdiction is unequivocally established and/or Defendants have been afforded EVERY opportunity to appeal any unlawful finding of this court (in the face of such overwhelming evidence otherwise), any prosecution of Defendants would be a violation of due process and equal protection of law.

Defendants have shown that the Indictment is fatally defective in that:

1) It fails to allege that the purported activities occurred within the special maritime or territorial jurisdiction of the United States as mandated by 18 USC § 7 and Article 1 Section 8 Clause 17 of the United States Constitution;
2) It fails to show subject matter jurisdiction with regard to § 7212(a) of the Internal Revenue Code by failing to allege that Defendants are "persons" who can be prosecuted for violations of code sections in Chapter 75 of the Internal Revenue Code as specified in § 7343.
3) It fails completely to provide sufficient judicial notice as to the "locality where" the alleged offenses occurred so as to NOTICE the district court that the offense occurred within the territorial jurisdiction of the United States pursuant to Brown v. U. S;
4) It fraudulently alleges violations of 26 USC § 7212(a), a law that has NEVER been enacted by Congress;
5) It claims a violation of Subtitle F Section 7212(a) of Title 26 when, pursuant to Title 26 § 7851, no provision of Subtitle F will take effect until the day AFTER the **TITLE** has been enacted into law. Since 26 USC has never been enacted none of the provisions of subtitle F, including § 7212(a) have any force or effect of law.
6) It fails completely to show or allege that Defendants are associated in any way with business activities subject to the published regulations governing § 7212(a) for liquor tax, tobacco tax or other excise taxable activities under the authority of the ATF. Absent published applicable regulations alleging offenses by Defendants for which the regulation clearly applies giving force and effect of law to the code section, the Indictment is fatally defective.

Defendants have shown that Federal Magistrates and United State Judges, as defined in the Federal Rules of Criminal Procedure are "specifically empowered by statutes in force in the territories and possessions, the Commonwealth of Puerto Rico, and the District of Columbia to perform a function to which a particular rule relates." *Rule 54(c) F. R. Crim. Pro.* Pursuant to the U. S. Constitution, federal law, and their own code of procedure, federal judges are ONLY empowered by "statutes in force in the territories and possessions, the Commonwealth of Puerto Rico, and the District of Columbia."

The territorial and subject matter jurisdiction of this Court has been **CHALLENGED**. The impossible burden of proof is on the moving party, NOT THE COURT, to prove jurisdiction. The district court should not go "ONE STEP FURTHER" UNTIL JURISDICTION IS PROVEN.

THEREFORE, ALL PROCEEDINGS SHOULD BE IMMEDIATELY STAYED pending the exhaustion of all lawful remedy. The fatally defective Indictment should be QUASHED and all charges against Defendants should be DISMISSED for the reasons stated hereinabove.

Respectfully submitted this ____ day of August, 1997.

s/Larry Maxwell	s/Harold Lake
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713-947-8382	205-339-8423

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the above and foregoing document were served by hand delivery, facsimile transmission and/or by Certified Mail (RRR) to:

Michael Whisonant
Asst. U. S. Attorney
1800 5th Ave. N., Suite 200
Birmingham, Alabama 35203

By: s/Larry Maxwell
Lawrence Stephen Maxwell

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ALABAMA

FILED
98 JUL 30 PM 3:08
U.S. DISTRICT COURT
N. D. OF ALABAM

UNITED STATES OF AMERICA

V.

Case Numbers CR 97-B-227-S and
CR –98-B-082-S

LAWRENCE STEPHEN MAXWELL, SR.
DEFENDANT

ENTERED
July 31, 1998

JUDGEMENT IN A CRIMINAL CASE
(For Offense(s) Committed On or After November 1, 1987)

The defendant, LAWRENCE STEPHEN MAXWELL, SR., was represented by Randy A. Dempsey.

On motion of the United States, the court has dismissed counts 2,3,4,6,7, and 8 in CR 97-227-S and counts 2 and 3 in CR 98-B-082S.

The defendant pleaded guilty to count 1 in CR 97-B-227-S and count 1 in CR 98-B-082-S. Accordingly, the defendant is adjudged guilty of the following counts, involving the indicated offenses.

Title & Section	Nature of Offense	Count Numbers
18 USC 371	CR 97-B-227-S Conspiracy to Obstruct and impede the Due Administration Of the Internal Revenue Laws	1
18 USC 287	CR 98-B-982-S Filing a False, Fictitious and Fraudulent Claim to a Federal Agency	1

As pronounced on July 24, 2998, the defendant is sentenced as provided in pages 2 through 6 of this Judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

It is ordered that the defendant shall pay to the United States a special assessment of $50.00 for count 1 in CR 97-B-227-S and $50.00 for count 1 in CR 98-B-982-S for total of $100.00, which shall be due immediately.

It is further ordered that the defendant shall notify the United States Attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this Judgment are fully paid.

Signed this the 30th day of July, 19 98.

s/Sharon Lovelace Blackburn
United States District Judge

Defendant's SSAN: 463-96-9407
Defendant's Date of Birth: 8/5/54
Defendant's address: 803 Briargreen Street;
Pasadena, TX 77503

IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a term of 18 months as to count 1 in CR-97-B-227-S and 18 months in CR 98-B-082-S, each count to run concurrently with the other.

It is recommended that the defendant be incarcerated as close as possible to his home in Houston, Texas.

The defendant is remanded to the custody of the United States Marshal.

RETURN

I have executed this Judgment as follows:

____

____

____

Defendant delivered on ____________ to ______________ at ______________________________, with a certified copy of this order.

____
United States Marshal

By: __________________________
Deputy Marshal

SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be on supervised release for a term of 36 months. The Probation Office shall provide the defendant with a copy of the standard conditions and any special conditions of supervised release.

STANDARD CONDITIONS OF SUPERVISED RELEASE

While the defendant is on supervised release pursuant to this Judgment:

1) The defendant shall not commit another federal, state, or local crime; specifically, the defendant shall not illegally possess a controlled substance and shall not own or possess a firearm or destructive device.
2) The defendant shall not leave the judicial district without the permission on the court or probation officer.
3) The defendant shall report to the probation office as directed by the court or probation office and shall

submit a truthful and complete written report within the first five days of each month.

4) The defendant shall answer truthfully all inquiries by the probation officer, shall provide the probation officer access to requested financial information, and shall follow the instructions of the probation officer.
5) The defendant shall support his or her dependants and meet other family responsibilities.
6) The defendant shall work regularly at a lawful occupation unless excused by the probation officer for schooling, training, or other acceptable reasons.
7) The defendant shall notify the probation officer within ten (10) days prior to any change in residence or employment. (On change of residence to a new jurisdiction of a person convicted either of a crime of violence or of a drug trafficking offense, the Probation Office is responsible for complying with the notice provisions of 18 U.S.C. § 4042(b).)
8) The defendant shall refrain from excessive use of alcohol, except that a defendant while in the Drug and Alcohol Intensive Counseling and Aftercare Service Program (DAICASP) (or comparable program in another district) shall consume no alcohol. The defendant shall not purchase, possess, use, distribute or administer any narcotic or other controlled substance, or any paraphernalia related to such substances.
9) The defendant shall not frequent places where controlled substances are illegally sold, used, distributed, or administered.
10) The defendant shall not associate with any persons engaged in criminal activity, and shall not associate with any person convicted of a felony unless granted permission to do so by the probation officer.
11) The defendant shall permit a probation officer to visit him or her at home or elsewhere and shall permit confiscation of contraband observed in plain view by the probation officer.
12) The defendant shall notify the probation officer within seventy-two hours of being arrested or questioned by a law enforcement officer.
13) The defendant shall not enter into any agreement to act as an informer or a special agent of a law enforcement agency without the permission of the court.

14) The defendant shall comply with any directions from the probation officer to serve notice of third party risks the defendant may pose, and shall cooperate with the officer's efforts to confirm compliance.

15) The defendant shall comply with the schedule of payments imposed by the probation officer to satisfy the balance of monetary obligation resulting from the sentence imposed by this case. Further, the defendant shall notify the probation office of any change in the defendant's economic circumstances that might affect the defendant's ability to pay a fine, restitution, or assessment fees.

16) Unless excused by a special condition of supervised release in this Judgment or by a subsequent order, the defendant shall comply with 18 U.S.C. § 3583(d) regarding mandatory drug testing. A positive urinalysis may result in the defendant's placement in the probation office's Drug and Alcohol Intensive Counseling and Aftercare Service Program (DAICASP) (or comparable program in another district) at the direction of the probation officer.

17) The defendant may be placed in the probation office's Drug and Alcohol Intensive Counseling and Aftercare Service Program (DAICASP) (or comparable program in another district) by virtue of a special condition of supervision contained in this Judgment, at the direction of the probation officer after a positive urinalysis, or a court order entered during the period of supervision for other good cause shown. This program may include (a) testing by the probation officer or an approved vendor to detect drug or alcohol abuse, (b) a mandatory drug education program (which may include individual group counseling provided by the probation office or an approved vendor), (c) placement in a residential treatment program or community corrections center for up to 180 days at the direction of the probation officer (with the defendant to pay the cost of subsistence if the probation officer determines that the defendant has the ability to do so), and (d) home confinement subject to electronic monitoring for a maximum period of 90 days at the direction of the probation officer (with the defendant to pay the cost of monitoring if the probation officer determines that the defendant has the ability to

do so).

18) The defendant shall report in person, within 72 hours of release from the custody of the Bureau of Prisons, to the probation office in the district where the defendant is released.

SPECIAL CONDITIONS OF SUPERVISION

While the defendant is on supervised release pursuant to this Judgment:

1) The defendant shall participate, if and as directed by the probation officer, in such mental health/vocational rehabilitation programs as the officer may direct.
2) The mandatory drug testing provisions of 18 U.S.C. § 3583(d) are waived upon the court's finding that the offense of conviction is not drug-related, there is no current or past history of substance abuse, and there is a low risk of future substance abuse by the defendant.
3) The defendant shall not incur any new debts (other than normal debts for utilities and rental expenses) or open any new lines of credit without permission of the probation officer unless the defendant is in compliance with the payment of any monetary obligations ordered.

FINE

The defendant shall pay a fine of $6,000.00.

This fine, plus interest, is due and payable immediately and may be collected in accordance with the Bureau of Prisons Inmate Financial Responsibility Program.

If the fine is not paid, the court may sentence the defendant to any sentence which might have been imposed. See 18 U.S.C. § 3614.

STATEMENT OF REASONS

The court adopts the factual finding and guideline application in the presentence report with the following exceptions and observations:

1. The defendant stated at sentencing that he has no knowledge of the judgment and sanctions referenced in paragraph 64 of the presentence report.

2. Paragraph 66 is deleted.

3. Defendant denies the allegation in paragraph 76 of the presentence report that Juris Advocates was formed to teach people how to fight the Internal Revenue Service.

4. With regard to paragraph 80 of the presentence report, defendant stated at sentencing that he has additional expenses, such as expenses for food and clothing,

Guideline Range Determined by the Court:

Total Offense Level	13
Criminal History Category:	I
Imprisonment Range:	12 months to 18 months
Supervised Release Range:	2 to 3 years
Fine Range:	$3,000.00 to $30,000.00
Restitution:	none

The court finds that there is no victim of defendant's criminal conduct and consequently no restitution is ordered.

The sentence is within the guideline range, that range does not exceed 24 months, and the court finds no reason to depart from the sentence called for by application of the guidelines.